(17,575.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 461.

J. L. LOMBARD, E. A. CUMMINGS, W. H. DOBLE, ET AL., PLAINTIFFS IN ERROR,

vs.

THE WEST CHICAGO PARK COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the State in which a decision could be had in the said suit between J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, plaintiffs in error, and The West Chicago Park Commissioners, defendants in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened, to the great damage of the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

b

The Seal of the Circuit Court of the United States, South'n Dist. Ill.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the eighth day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—

JAMES H. CARTWRIGHT,
Chief Justice of Supreme Court of Illinois.

c In the Supreme Court of Illinois.

EDMUND A. CUMMINGS ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the 15th day of November, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 16th day of November, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 16, 1899. C. M.]

d UNITED STATES OF AMERICA, *ss:*

To the West Chicago Park Commissioners, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, chief justice of the supreme court of the State of Illinois, this 11th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. CARTWRIGHT,
Chief Justice of Supreme Court of Illinois.

Service of the above citation and receipt of a copy thereof admitted this 14th day of November, A. D. 1899.

FRANCIS A. RIDDLE,
H. S. MECARTNEY,
Solicitors of Record for West Chicago Park Commissioners, Defendants in Error and Appellees in Supreme Court of State of Illinois.

e In the Supreme Court of Illinois.

EDMUND A. CUMMINGS ET AL. vs. WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the 15th day of November, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing citation and acceptance of service was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this 16th day of November, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 16, 1899. C. M.]

f In the Supreme Court of Illinois.

EDMUND A. CUMMINGS ET AL. vs. WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to four hundred fifty-nine (459), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 16th day of November, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 16, 1899. C. M.]

1 At a supreme court begun and held at Springfield on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the fifth day of October, A. D. 1898, there was filed in the office of the clerk of the said court a certain transcript of the record and proceedings of the county court of Cook county; which said transcript of record is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable William T. Hodson, county judge of Jo Daviess county, presiding as judge of the county court of Cook county at the request and in the absence of the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 9th day, of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-second.

Present: The Honorable William T. Hodson, acting judge of the county court of Cook county; James Pease, sheriff of Cook county.
Attest: PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, to wit, on the 28th day of August, in the year of our Lord one thousand eight hundred and ninety-six, the same being one of the days of the August term of the county court of Cook county, there was filed with the clerk of said court a certain petition in words and figures as follows, to wit:

3 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

To the Honorable Orrin N. Carter, judge of said court:

Your petitioners, West Chicago Park Commissioners, respectfully show that said commissioners are park commissioners and corporate authorities for park purposes for the town of West Chicago, and that they have been appointed as such under and in pursuance of acts of the General Assembly of the State of Illinois, which have been submitted to the legal voters of said town and by them adopted for the purpose of locating, establishing, enclosing, improving, and maintaining public parks, boulevards, driveways, and highways, and duly authorized to perform and discharge such duties as are by law imposed upon such authorities.

That your petitioner, in pursuance of said authority conferred upon it, did locate a boulevard or pleasureway in said town of West Chicago, known as Douglas boulevard (or Douglas Park boulevard), extending from the southeasterly boundary of Garfield park to the

western boundary line of Douglas park, said two parks and said boulevard being under the jurisdiction, control, and authority of your petitioner.

4 And your petitioner further shows that, desiring to improve said Douglas boulevard from the southeasterly line of Garfield park to the western line of Douglas park, it did carefully designate the line of said improvements, and did prepare a plan or plans thereof, and did prepare an estimate of the cost of such contemplated improvement, together with specifications therefor, and did transmit such plan, specifications, and estimates to the supervisor, assessor, and clerk of the said town of West Chicago, in which said boulevard is located, said officers being the corporate authorities duly designated by an act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1, 1873, as the corporate authorities of said town to make a special assessment for the purpose of paying the cost of such contemplated improvement of said boulevard; that your petitioner was requested and authorized to undertake and proceed with said improvement by a petition, duly made in writing, by the owners of a majority of the land frontage on the proposed improvement, as required by said act of May 2, 1873.

5 Your petitioner further shows that upon the transmission and presentation of said plans, specifications, and estimates the corporate authorities of said town designated by said statute, at a special meeting called for that purpose and held at the office of said town of West Chicago on March 28, A. D. 1893, determined by ordinance, duly adopted and passed by said authorities, that such improvements as were described in the plans, specifications, and estimate so transmitted to said corporate authorities of said town should be made, and that the expense of such improvement should be raised wholly by special assessment upon the property, lots, and lands fronting and abutting upon said Douglas boulevard, as aforesaid; that thereafter, on April 7, A. D. 1893, a petition was filed in this honorable court by said town of West Chicago, reciting said proceedings and ordinance and praying that commissioners to assess the cost of said improvement on the property benefited might be appointed (case No. 10655), and for such farther proceedings as might be necessary to properly levy and collect said special assessment; that thereafter commissioners were duly appointed, an assessment-roll was duly made and filed as prayed in said petition, and on the 12th day of May and on the 8th day of July, 1893, orders were entered in said cause confirming said assessment-roll; that thereafter various lot-owners made

6 payments on various lots so assessed in said roll and a large portion of said assessments were collected; that various lot-owners so assessed have failed, declined, and refused to pay their assessments, and so a large portion of such assessment remains uncollected.

Your petitioner further shows that after said confirmation orders the owners of certain property assessed in said roll *served* out a writ of error from the supreme court of Illinois, seeking to annul the confirmation of said special assessment, and thereafter the said cause was heard in the said supreme court, and the said court, after considering the same, and on the 28th day of March, A. D. 1896, ordered that said cause be reversed and remanded for further proceedings and with certain directions, and held that said ordinance for the making of said improvement was void, because it illegally provided that said assessment should be divided into installments, and that said judgments of confirmation were null and void; wherefore the provisions of said ordinance and said special assessment proceedings have failed; that in consequence thereof all attempts to collect said assessments have been abandoned by petitioners by resolution duly entered on its records.

7 Your petitioner further shows that by reason of the special assessment proceedings aforesaid for the purpose of paying for said improvement having so been declared null and void, and the said provisions thereof having failed, your petitioner is desirous and hereby petitions said court that a new special assessment for the cost of said improvement on property benefited may be levied, and that all lots, blocks, tracts, or parcels of land found benefited by the same shall pay for the said benefits.

Your petitioner further shows that on the 14th day of July, A. D. 1896, in pursuance of its desire and purpose to have made, levied, and collected a new special assessment for the cost of said improvement, it passed the following ordinance:

An ordinance for a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook, and State of Illinois.

Be it ordained by the West Chicago park commissioners in regular meeting assembled:

8 SEC. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates made and transmitted by said West Chicago park commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate

authorities of said town of West Chicago, in the county court of Cook county, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case number 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said
9 county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore, and on the 28th day of March, A. D. 1896, declared void by the supreme court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included an asphalt roadway, and a granite macadam roadway, concrete sidewalks, and concrete combined curb & gutter, earth filling, grass plats, trees, catch-basins, & connections and superintendence of work: now

Therefore, be it ordained:

SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed for, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

10 SEC. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SEC. 4. This ordinance shall be in force from and after its passage.

Your petitioner further shows that afterwards and on the said 14th day of July, A. D. 1896, said commissioners also made an estimate of the cost of said improvement, and a report thereof was entered upon their records, and that the said estimate and order adopting and spreading the same upon the record are as follows:

"Be it resolved and ordered that the following estimate be adopted as the estimate of this board of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby, directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost of said improvement in accordance with the act in said ordinance mentioned.

Estimate of Cost of Improvement and Report Thereon.

11 The following is an estimate made by the West Chicago park commissioners of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, said estimate being made in pursuance of an ordinance of the West Chicago park commissioners passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement; which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners relating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

Estimate.

Asphalt paving	$110,420.71
Macadam paving	35,087.81
Combined curb and gutter	28,045.34
Cement sidewalk	24,262.26
Filling	17,290.20
Trees	1,110.30
Catch-basins and connections	3,819.59
Gas-lamp connections	2,106.00
12 Manhole covers, sand, cement, brick, pipe, general labor, teaming, engineering, surveying, and inspection	19,770.51
Expense of making and levying this assessment	7,287.59
Total cost of improvement	$250,207.20"

Wherefore this petitioner prays that the cost of said improvement may be assessed in the manner provided by law and in accordance with the said act approved June 24 and in force July 1, A. D. 1895.

WEST CHICAGO PARK COMMISSIONERS,
By E. T. NOONAN, *Its Attorney.*
H. S. McCARTNEY, *Counsel.*

And afterwards and on, to wit, the 29th day of August, 1896, a certain assessment-roll was filed in said cause; which assessment-roll was in words and figures as follows, to wit:

Assessment-roll.

Assessment-roll made by the West Chicago park commissioners and filed in the county court of Cook county for the special
13 assessment of the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard)

from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, Cook county, Illinois, showing a description of real estate deemed by said commissioners specially benefited by said completed improvement, and also showing a description of each lot, block, tract, or parcel of land, and the total amount assessed by said commissioners as special benefits thereto, the names of the respective owners thereof, so far as known; showing also the credit to which each lot, block, tract, or parcel of land so specially assessed is entitled to, if any, for or on account of payments on previous assessments or installments thereof and the net amount of benefits assessed thereon; also showing the amount found by said commissioners as public benefit and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners:

14 Name of owner so far as known.	Description. Sublot.	Lot.	Block.	Total amount of benefits assessed.	Credit by payments on previous assessments or installments thereof.	Net amount of benefits assessed.
Lambert Tree's subdivision of the W. ½, N. W. ¼, sec. 14, T. 39, R. 13.						
Lambert and Anna J. Tree	...	....	17	3,878 33	765 00	3,113 33
Vance's Garfield Boulevard addition to Chicago, a subdivision of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, sec. 14, T. 39, R. 13.						
J. W. Powell	28	"A"	2	676 66	276 08	400 58
D. S. Goodwin's subdivision in N. W. ¼ N. E. ¼ sec. 23, town 39, range 13.						
E. A. Cummings & Co	....	31	5	416 66	56 66	360 00
Do.	....	32	....	416 66	56 66	360 00
Do.	...	33	....	416 66	56 66	360 00
Do.	....	34	....	416 66	56 66	360 00
Do.	....	35	....	416 66	56 66	360 00
Do.	....	36	....	416 66	56 66	360 00
Do.	....	37	....	416 66	56 66	360 00
Do.	....	38	....	416 66	56 66	360 00
Do.	....	39	....	416 66	56 66	360 00
Do.	....	40	....	416 66	56 66	360 00
Do.	....	41	....	416 66	56 66	360 00
Do.	....	42	..	416 66	56 66	360 00
Do.	....	43	....	416 66	56 66	360 00
Do.	....	45	....	416 66	56 66	360 00
Do.	....	46	....	416 66	56 66	360 00
Do.	....	47	....	416 66	56 66	360 00
Do.	....	48	....	375 00	56 66	319 34
Subdivision of W. ½ N. ½ W. ½ E. ½ S. W. ¼ sec. 14, T. 39, R. 13.						
W. H. Dobble	...	15	....	833 33	340 00	493 33
Katie Triplet	....	17	....	833 33	100 00	733 33
Prescott's Douglas Park addition to Chicago, in sec. 23, T. 39, R. 13.						
Moses J. Wentworth	14	2	1	678 33	138 38	539 95
Do.	14	2	2	678 33	138 38	539 95
John B. Scully	21	2	2	416 66	85 00	331 66
Moses J. Wentworth	22	2	2	416 66	85 00	331 66
Do.	23	2	2	416 66	85 00	331 66
Prescott's Douglas Park addition to Chicago, a subdivision of blocks 1, 2, 5 and 10, in circuit court partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of sec. 23, town 39, range 13.						
Moses J. Wentworth	1	2	5	678 33	138 38	539 95
Thomas J. Gilmore	2	2	5	416 66	127 50	289 16
Do.	3	2	5	416 66	85 00	331 66
Do.	4	2	5	416 66	85 00	331 66
Do.	5	2	5	416 66	85 00	331 66
Do.	6	2	5	416 66	85 00	331 66
John O. Donahue	10	2	5	416 66	85 00	331 66
Douglas Park addition to Chicago, in W. ½ N. W. ¼, sec. 24, T. 39, R. 13.						
J. L. Lombard (ex. E. 300 ft. and ex. street)	....	....	1	3,866 00	400 00	3,466 00

15 Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the property specially benefited by said improvement and apportioned to and assessed upon such property.....	$249,965.21
Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the public and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners.....	241.99
Total cost of the said completed improvement.	$250,207.20

CHICAGO, *August* 29, 1896.

The undersigned, West Chicago Park Commissioners, do hereby certify to the county court of Cook county that they have specially assessed the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, Cook county, Illinois.

And said commissioners do further certify that the said
16 special assessment is shown by the foregoing assessment-roll, showing a description of the real estate by them deemed benefited by said completed improvement; also showing a description of each lot, block, tract, or parcel of land, and the total amount assessed by them as special benefits thereto, the names of the respective owners thereof so far as known, showing, also, the amount found by said commissioners as public benefit and assessed to the district subject to the maintenance of the parks under control of said West Chicago Park Commissioners; that before entering upon their said duties they examined the locality where the said completed improvement has been made and the lots, blocks, tracts, and parcels of land which are specially benefited thereby, and did estimate what proportion of the total cost of said completed improvement is of benefit to the public, and what proportion thereof is of benefit to the property benefited, and did apportion the same between the said park district and such property so that each should bear its relative equitable portion, the amount so estimated and apportioned to said park district being the sum of $241.99 and the amount so estimated and apportioned to property benefited being the sum of $249,965.21; that, having found said amounts,
17 they did apportion and assess the amount so found of benefit to said property upon the several lots, blocks, tracts, and parcels of land in the proportion in which they are benefited by said completed improvement, and that no lot, block, tract, or parcel of land has been assessed a greater amount than it has been actually benefited thereby; that said assessment-roll also shows the credit to which each lot, block, — tract of land so specially assessed is entitled to, if any, for or on account of payments on previous assess-

ments or installments thereof, and the net amounts of benefits assessed thereon.

HARVEY T. WEEKS,
CARL MOLL,
WALTER S. BOGLE,
ANDREW J. GRAHAM,
JOHN M. OLIVER,
CHARLES J. VOPICKA,
EDWARD J. UIHLEIN,
West Chicago Park Commissioners.

And afterwards and on, to wit, the 1st day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

18 In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Park Boulevard. 15232.

And now, on this day, it is ordered by the court that the commissioners heretofore appointed herein who have not signed the assessment-roll in said cause have leave, and such leave is hereby given them, to sign the same.

It is further ordered by the court that said petitioners have leave to withdraw from the files in this court for three days the assessment-roll heretofore filed in said cause.

And afterwards and on, to wit, the 16th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

On motion of the attorney for the said petitioners, it is
19 ordered by the court that any and all parties desiring to object to the confirmation of the assessment-roll herein file their objections thereto in writing on or before September 23, 1896, at ten o'clock a. m.

And afterwards, on, to wit, the 15th day of September, certain objections were filed in said court; which objections were in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County, to the September Term, A. D. 1895.

In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvement of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come J. L. Lombard, E. A. Cummings, W. H. Doble,
20 J. N. Vance, Kate Triplett, John B. Taylor, William Taylor, Dennie J. Daley, Francis J. Dougherty, Robert Elliott, Estate of Michael Reilly, deceased, and Lambert Tree and Anna J. Tree, by Wilson, Moore & McIlvaine, their attorneys, and show to the court that they are the owners of the premises described in the annexed "Schedule of lands" set opposite their names respectively, assessed in said proceedings, and they object to the confirmation of the said assessment-roll for the reasons set forth in the annexed list of objections marked "Objections to judgment."

WILSON, MOORE & McILVAINE,
Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Kate Triplett, John B. Taylor, Dennie J. Daley, Francis J. Dougherty, Estate of Michael Reilly, Deceased, Lambert Tree and Anna J. Tree.

Schedule of Lands.

J. L. Lombard:

Block 1 (ex. E. 300 ft. and ex. streets), in Douglas Park addition to Chicago, in west half northwest quarter, S. 24, T. 39 N., R. 13 E., 3d P. M., assessed $3,466.

21 E. A. Cummings:

Sublot 14 of lot 2, block 1, Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of 3d P. M., assessed $539.95.

Sublot 14 of lot 2, block 2, Prescott's Douglas Park addition to Chicago aforesaid, assessed $539.95.

Sublot 1 of lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, a sub. of blocks 1, 2, 5, and 10, in circuit court partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of S. 23, T. 39 N., R. 13 E., of 3d P. M., assessed $539.95.

Sublot 10, in lot 2, block 5, in Prescott's Douglas Park addition aforesaid, assessed $331.66.

W. H. Doble:

Lot 15, in sub. of W. ½ N. ½ W. ½ E. ½ S. W. ¼, S. 14, T. 39 N., R. 13 E., of 3rd P. M., assessed $493.33.

Kate Triplett:

Lot 17, in sub. of W. ½ N. ½ W. ½ E. ½ S. W. ¼, S. 14, T. 39 N., R. 13 E. of 3d P. M., assessed $733.33.

J. N. Vance:

Sublot 28, lot "A," B. 2, Vance's Garfield Boulevard addition to Chicago, a sub. of part of blocks 1 & 2, in circuit court partition of W. ½ S. W. ¼, S. 14, T. 39 N., R. 13 E., of the 3rd P. M., assessed $458.

John B. Taylor:

Sublot 21, lot 2, block 2, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3d P. M., assessed $331.66.

William Taylor:

Sublots 22 and 23, lot 2, block 2, in Prescott's Douglas Park addition in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed $331.66.

Dennis J. Daley:

Sublot 5, lot 2, block 5, in Prescott's Douglas Park addition to Chicago in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed $331.66.

Francis J. Dougherty:

Sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed $331.66.

Lambert & Anna J. Tree:

Block 17, in Lambert Tree's subdivision of the W. ½ of the N. W. ¼ of S. 14, T. 39 N., R. 13 E., of the 3rd P. M., assessed $3,113.33.

Robert Elliott:

Lots 3 and 4, sub-block 2 of block 5, in Prescott's Douglas Park addition in S. 23, T. 39 N., R. 13 E., of the 3rd P. M., Cook county, assessed, each, $331.66.

Estate of Michael Reilly:

Lots 31 to 48, both inclusive, in block 5, Goodwin's subdivision of the N. W. ¼ N. E. ¼, S. 23, T. 39 N., R. 13 E., of the 3rd P. M., assessed, each (except lot 48), $360.

Lot 48, assessed $319.34.

Objections to Judgment.

1st. The ordinance for said improvement is incomplete, informal, and otherwise invalid.

2d. The ordinance for said assessment is invalid, in that it does not describe the improvement with sufficient certainty.

3d. The improvement described in said ordinance is double.

4th. Said municipality has not power or jurisdiction to make the proposed improvement.

24 5th. Said assessment is levied for a purpose not authorized by law.

6th. Said assessment was levied by commissioners who were not eligible to act as such, and who failed to qualify and take the oath as the law requires.

7th. The improvement to be paid for by said assessment has been changed, and is different from that described in said ordinance and proceedings.

8th. The petition for said assessment is informal, and does not contain a copy of the ordinance therefor.

9th. Said assessment is not levied upon the several parcels of land in the proportion of the benefits thereto from said improvement.

10th. Said assessment is levied upon a part only of the property specially benefited thereby.

11th. The said assessment upon the property of said objectors exceeds the benefits which will accrue to said property from the proposed improvement.

12th. The said assessment upon the property of said objectors exceeds the proportionate share of the expenses of said improvement equitably and fairly chargeable upon said property.

25 13th. The description of said improvement in the notices of application for confirmation, in the oath taken by the commissioners, and in the assessment-roll are insufficient and variant from the ordinance directing the making of said improvement.

14th. The petition and record do not show that the preliminary steps required by law have been taken, and such steps have not in fact been taken.

15th. The commissioners have not, in making said assessment, followed the requirements of the said ordinance, but have made and returned an assessment which does not comply either with said ordinance or the statutes of this State.

16th. The property of objectors is assessed by an illegal description and not in accordance with the division thereof.

17th. Said objectors further show that heretofore and at the May term, A. D. 1893, a proceeding was begun in this court by the corporate authorities of the town of West Chicago to confirm an assessment-roll then filed in said court for the same improvement described in this proceeding, and objections were filed on behalf of all the premises described in the above schedule of lands;

26 that upon a hearing of said objections the court found that all the said premises in the respective parcels as they had been therein assessed were not benefited to the amount of the said assessment, but for a less amount, and the said assessment as to each of said parcels was thereupon reduced to the amount so found by the court, and as so reduced was confirmed by the judgment of the court then and there entered; that all the said parcels were assessed in the said proceeding in an amount greatly less than is assessed upon them and each of them in the present proceeding; that as to

many of the premises above herein described the said assessment has been paid in full, pursuant to the said judgment, and as to all of the same payments have been made of all the installments which have accrued thereon since the said judgment of confirmation and in pursuance thereof.

The said judgment was entered upon full consideration, the court having then and there jurisdiction of the subject-matter, and of all the premises therein assessed and the owners thereof, and these objectors plead the said judgment as a complete adjudication of all the questions in issue in this cause, and hereby set up and rely upon the same in bar of this proceeding.

18th. As to the premises assessed in said assessment de-
27 scribed as block 7, in Lambert Tree's subdivision of the west half of the northwest quarter of section 14, township 39 north, range 13 east, of the third principal meridian, the owner of said premises objects to this assessment for the further reason that the work for which said assessment is levied has been done and completed and now exists; that this assessment purports to be levied in lieu of and as a substitute for a prior assessment for the same purpose; that in said prior assessment for the same improvement the west half of the northwest quarter of said section 14 was assessed as a whole; that block 17 is a small portion of the same premises, not exceeding one-twentieth thereof; that the statute does not permit a substitute assessment to be levied upon different property from that assessed in the original proceeding, and said assessment as to the premises above mentioned is void and unauthorized by law.

And afterwards & on, to wit, the 16th day of September, 1896, a motion to cancel assessment was filed in said court; which said motion to cancel assessment was in words and figures as follows, to wit:

28 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County, to the September Term, A. D. 1896.

In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvement of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Kate Triplett, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Robert Elliott, Estate of Michael Reilly, deceased, and Lambert Tree and Anna J. Tree, by their attorneys, Wilson, Moore & McIlvaine, and move the court to cancel and annul said assessment for the following reasons, viz:

1. The assessment is unequal and inequitable, in that property which should have been assessed is omitted from the roll.

29 2. The assessment is made for largely more than the actual cost of the work and of making and levying the assessment.

3. The commissioners have abused their discretion, and have distributed the burden of said expense unfairly and unequally.

4. Said ordinance is unreasonable and oppressive, and is therefore void.

5. Said ordinance is not authorized by law, and is in excess of the powers of the municipality.

6. For each of the reasons set forth in the objections filed herein on behalf of the said respondents.

7. The said assessment is levied as an alternative or substitute assessment for work already done and completed under an ordinance which has been held void by the supreme court. The court has therefore no jurisdiction to entertain such assessment proceeding.

8. There is no valid ordinance in existence providing for said improvement.

WILSON, MOORE & McILVAINE,
Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Kate Triplett, John B. Taylor, William
30 *Taylor, Dennis J. Daley, Francis J. Dougherty, Robert Elliott, Lambert Tree, and Anna J. Tree.*

And afterwards, on, to wit, the 25th day of September, 1896, a certificate of publication of the notice for said assessment, together with affidavits of posting such notices and affidavit of mailing the notices, were filed in said court; which said affidavits, with notices, are respectively in words & figures as follows, to wit:

Certificate of Publication.

STATE OF ILLINOIS, } ss:
Cook County, }

This certifies that a notice, of which the annexed notice is a true copy, has been published two successive weeks in the "*The* West End Advocate," a weekly newspaper printed and published in the town of West Chicago, in the city of Chicago, in the said Cook county, Illinois, and that the date of the first paper containing the said published notice was the 29th day of August, A. D. 1896, and that the date of the last paper containing the same was the 15th day of September, A. D. 1896.

31 (Signed) CHARLES E. CRANDALL, *Publisher.*

It is further certified that the said "The West End Advocate" was at and during the time and on the dates of the said publication of said notice and is now a weekly newspaper printed and published in the town of West Chicago, in the city of Chicago, Cook county, Illinois, and of general circulation therein, and that Charles E.

Crandall was during said time and on said dates of publication and is now the publisher of said newspaper.

In witness whereof Charles E. Crandall, publisher of said "The West End Advocate," has signed this certificate this 15th day of September, A. D. 1896.

(Signed) CHARLES E. CRANDALL, *Publisher.*

Certificate of Publication.

STATE OF ILLINOIS, } ss:
Cook County, }

This certifies that a notice, of which the annexed notice is a true copy, has been published five successive days in "The Chicago Chronicle," a daily newspaper printed and published in the city of Chicago, in the said Cook county, and that the date of the
32 first paper containing the said published notice was the first day of September, A. D. 1896, and that the date of the last paper containing the same was the fifth day of September, A. D. 1896.

(Signed) H. W. SEYMOUR, *Publisher.*

It is further certified that the said "The Chicago Chronicle" was at and during the time and on the dates of the said publication of said notice and is now a newspaper printed and published in the city of Chicago, Cook county, Illinois, and of general circulation therein, and that H. W. Seymour was during said time and on said dates of publication and is now the publisher of said newspaper.

In witness whereof H. W. Seymour, publisher of said "The Chicago Chronicle," has signed this certificate this 15th day of September, 1896.

(Signed) H. W. SEYMOUR, *Publisher.*

Annexed to each of said certificates is the following notice:

Special Assessment Notice.

"Notice is hereby given to all persons interested that the West Chicago Park Commissioners, having ordered that the cost of the completed boulevard improvement of Douglas boulevard (or
33 Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago and in the city of Chicago, be paid by special assessment on the property benefited thereby, the ordinance for the same being on file in the office of the said West Chicago Park Commissioners, have applied to the county court of Cook county, Illinois, for an assessment of the cost of said completed portion of said improvement, according to benefits, and an assessment thereof having been made and returned to said court, the final hearing thereon will be had at the September term of said court, commencing on the 14th day of September, A. D. 1896; all

persons desiring may then and there appear and make their defense."

Dated August 29, 1896.

Signatures of—

HARVEY T. WEEKS,
CARL MOLL,
JOHN M. OLIVER,
ANDREW J. GRAHAM,
WALTER S. BOGLE,
CHAS. J. VOPICKA,
EDWARD G. UIHLEIN,
West Chicago Park Commissioners.

Affidavit of Posting Notices.

STATE OF ILLINOIS, }
Cook County, } *ss:*

Dennis Colbert, being duly sworn according to law, upon
34 his oath says:

That on the 27th day of August, A. D. 1896, affiant, at the instance and request of the West Chicago Park Commissioners, posted notices, of which the following annexed notice is a true copy, to wit:

(Here is set forth similar assessment notice to the one above shown.)

as follows: By securely affixing the same, one to the premises at the southeast corner of Colorado street and Douglas boulevard; one to the premises at the southeast corner of Douglas boulevard and Harrison street, the said two places being in the neighborhood of said improvement specified in said notice; one at the door of the main entrance to the office of said West Chicago Park Commissioners, and one at the door of the main entrance of the office of the supervisor of the town of West Chicago; all of such places being public places in the town of West Chicago, in the city of Chicago, Cook county, Illinois.

DENNIS COLBERT.

Subscribed and sworn to 15th day of September, A. D.
35 1896.

[SEAL.]
[SEAL.]

HARRY W. KOPPE,
Notary Public.

Commissioner's Affidavit.

STATE OF ILLINOIS, } ss
Cook County, }

In the County Court of Cook County, etc.

Harvey T. Weeks, being duly sworn according to law, upon oath says:

That he is and was at the time of the doing of the acts hereinafter mentioned one of the West Chicago Park Commissioners; that said West Chicago Park Commissioners, having heretofore made a special assessment to assess the cost of the completed boulevard improvement on Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago—the assessment-roll therefore being on file in the above cause—that said West Chicago Park
36 Commissioners did cause to be sent by mail to the owners whose premises have been specially assessed by the said Commissioners, as aforesaid, for the cost of said completed portion of said improvement, and whose names and places of residence were known to said commissioners or either of them, the notice required by law to be sent by mail to the owners of premises assessed; that a substantial copy of said notice was as follows:

"Mr. (here the name was inserted): Your (here the description of the premises was inserted) is assessed (here the amount of assessment on the premises was inserted) for public improvement. The assessment-roll will be returned to the September term, A. D. 1896, of the county court of Cook county. Harvey T. Weeks, Carl Moll, John M. Oliver, Andrew J. Graham, Walter S. Bogle, Charles J. Vopicka, Edward H. Uihlein, West — Park Commissioners.

NOTE.—The above assessment is for the completed portion of the boulevard improvement of Douglas boulevard from Garfield park to Douglas park."

That each and all of said notices were mailed on the 3d day of September, A. D. 1896, and at least ten days before the first day of said September term, A. D. 1896.

HARVEY T. WEEKS.

Subscribed and sworn to 15th day of September, A. D. 1896.

ENOCH J. PRICE,
[SEAL.] *Notary Public.*

37 And afterwards and on, to wit, the 26th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Assessment by THE WEST CHICAGO PARK COMMISSIONERS for the Completed Boulevard Improvement on Douglas Boulevard from Garfield Park to Douglas Park, in the Town of West Chicago, City of Chicago. 15232.

On this 26th day of September, A. D. 1896, comes The West Chicago Park Commissioners, by *its* attorney, and moves the court for a default herein and for confirmation of said assessment.

And it appearing to the court that the said West Chicago Park Commissioners have complied with all the requirements of the law in making said assessment, and also as to posting and sending notices to the owners of the property assessed, and that due publication of notice was made, and that due notice, as required by law, has been given of this application and of the making and return of said assessment and of the time for the final hearing thereon,
38 and no objection to said assessment having been filed, except as to the real estate described below, and no defense thereto made except on behalf of the owners of the real estate for which objections have been filed—

It is ordered and adjudged by the court that a default be, and is hereby, entered against each and all the lots, blocks, tracts, and parcels of land assessed and described in the said assessment-roll for said improvement, returned and filed in this court, as to which no objections have been filed, and that said assessment and all proceedings therein be, and the same are hereby, confirmed, except as to the real estate described in objections on file, and that the clerk of this court certify the assessment-roll returned by said commissioners, together with this judgment, to Dennis Colbert, collector of special assessments for said West Chicago Park Commissioners, it appearing to the court that he is authorized to collect the said assessments as required by law.

The real estate for which objections have been filed is described as follows:

Block 1 (ex. E. 300 ft. and ex. streets), in Douglas Park addition to Chicago, in W. ½ of N. W. ¼, 24, 39, 13 E.; sublot 14 of
39 lot 2, block 1, Prescott's Douglas Park addition, 23, 39, 13; sublot 14 of lot 2, block 2, Prescott's Douglas Park addition aforesaid; sublot 1 of lot 2, in block 5, Prescott's Douglas Park addition, a sub of blocks 1, 2, 5, and 10, in circuit — partition of E. ½ N. E. ¼, E. ½ S. E. ¼, of sec. 23, 39, 13 E.

Sublot 10, in lot 2, block 5, in Prescott's Douglas Park addition aforesaid; lot 15, in subdivision of W. ½ N. ½, W. ½ E. ½ S. W. ¼, 14, 39, 13; lot 17, in subdivision of W. ½ N. ½, W. ½ E. ½ S. W. ¼, 14, 39, 13; sublot 28, lot "A," block 2, in Vance's Garfield boulevard addition, a sub of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, 14, 39, 13; sublot 21, lot 2, block 2, in Prescott's Douglas Park addition, 23, 39, 13; sublots 22, 23, lot 2, block 2, in Prescott's Douglas Park addition, 39, 13; sublot 5, lot 2, block 5, in Prescott's Douglas Park addition, 23, 39, 13; sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition, 23, 39, 13; block 17 in Lambert Tree's sub of W. ½ of N. W. ¼, 14, 39, 13; lots 3 and 4,

sub-block 2 of block 5, in Prescott's Douglas Park addition, 23, 39, 13; lots 31 to 48, both inclusive, in block 5, Goodwin's sub of N. W. ¼ N. E. ¼, 23, 39, 13.

40 And afterwards and on, to wit, the 17th day of December, 1896, a certain amendment to objections was filed in said court; which said amendment to objections was in words as follows, to wit:

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvement of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come the objectors, represented by Wilson, Moore & McIlvaine, in the above proceeding, viz., J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael
41 Reilly, deceased, and, by leave of court for that purpose first had and obtained, amend the objections heretofore filed by them to the confirmation of the assessment-roll in said proceeding by adding thereto the following objections, viz:

1. Said new or supplemental proceeding and assessment is not authorized by law.

2. The said new or supplemental proceeding and assessment does not follow the requirements of the statute nor conform thereto.

3. On behalf of objector Lombard it is further objected that his property was not assessed in the original roll and was assessed in said proceeding by consent, and with the agreement between the parties that it should be assessed $1,000.00 and no more, which agreement was carried into effect by said judgment, and in reliance on said agreement said objector has paid two instalments of the assessment so levied.

4. Said Lombard further objects that after said assessment was made and judgment entered thereon, as stated in the last preceding objection, a new agreement was made and entered into by and between said objector and said park commissioners, by which
42 it was agreed, for a sufficient consideration, that in addition to the said assessment of $1,000.00 he should also pay an additional sum of two thousand dollars, making three thousand dollars in all, which agreement is still in full force and effect.

WILSON, MOORE & McILVAINE,
Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael Reilly, Deceased.

And afterwards and on, to wit, the 17th day of December, 1896, a certain "amendment to motion to cancel" was filed in said court; which said "amendment to motion to cancel" was in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

43 In the Matter of the Application of the Corporate Authorities of the Town of West Chicago for Confirmation of Assessment-roll in Special Assessment No. 15232, Made by West Chicago Park Commissioners for Completed Boulevard Improvements of Douglas Boulevard from Douglas Park to Garfield Park. No. 15232.

Now come the objectors, represented by Wilson, Moore & McIlvaine in the above proceeding, viz., J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael Reilly, deceased, and, by leave of court for that purpose first had and obtained, amend the "motion to cancel" heretofore filed by them in said proceeding by adding in support thereof the following reasons, viz:

1. Said new or supplemental proceeding and assessment is not authorized by law.

2. The said new or supplemental proceeding and assessment does not follow the requirements of the statute nor conform
44 thereto.

WILSON, MOORE & McILVAINE,
Att'ys for J. L. Lombard, E. A. Cummings, W. H. Doble, Kate Triplett, J. N. Vance, John B. Taylor, William Taylor, Dennis J. Daley, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Robert Elliott, and the Estate of Michael Reilly, Deceased.

And afterwards and on, to wit, the 3rd day of October, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Park Boulevard. 15232.

And now, on this day, it is ordered by the court that Edward J. Uihlein, heretofore appointed a commissioner herein, have leave, and such leave is hereby given him, to sign the assessment-roll in said cause.

And afterwards and on, to wit, the 27th day of April, 1897, the following, among other, proceedings were had by and before
45 said court and entered of record, to wit:

Special Assessment.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day again come the petitioners herein, by their attorney, and the objectors herein, by their attorneys, and said cause comes on to be heard on the legal objections to said assessment. After arguments of counsel and due deliberation by the court, it is ordered that all of said legal objections be, and are hereby, sustained.

And thereupon, on motion of the said objectors, it is further ordered that the petition herein be, and is hereby, dismissed.

Whereupon the said West Chicago Park Commissioners now here duly excepts and prays an appeal to the supreme court of the State of Illinois, which is allowed them on filing herein bill of exceptions within sixty days.

46 And afterwards and on, to wit, the 7th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

Special Assessment.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

On this day comes the said petitioner, by its attorney, and enters its motion for a rehearing in said cause; which is continued until tomorrow.

And afterwards and on, to wit, the 8th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

Special Assessment.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

And now, on this day, said cause again comes on to be heard on the petitioner's motion heretofore entered for a rehearing in said cause. Come all the parties in interest by their attorneys re-
47 spectively. After arguments of counsel and due deliberation of the court, it is ordered that said motion for a rehearing, as aforesaid, be, and is hereby, overruled; whereupon the said petitioners now here duly except and pray an appeal to the supreme court of the State of Illinois, which is allowed on said petitioners filing herein bill of exceptions within sixty days from this date.

And afterwards and on, to wit, the 8th day of February, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Special Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard from Garfield Park to Douglas Park. 15232.

And now comes The West Chicago Park Commissioners, petitioner herein, and on its motion it is ordered that as to all the property for which a default order of confirmation was heretofore entered, to wit, on September 26, 1896, the said order of confirmation is hereby re-entered and reconfirmed as of its date, *nun- pro tunc*, as of September 26, 1896.

And it is further ordered that as to all such property affected by said order of confirmation the clerk of this court certify forth-
48 with the assessment-roll returned in this cause by said commissioners, together with this judgment and said judgment of September 26, 1896, of Homer B. Galpin, collector of special assessments for said West Chicago Park Commissioners, it appearing to the court that said office, viz., collector of special assessments, is an office which has been created by said commissioners, and that said Homer B. Galpin is the present incumbent of said office.

And afterwards and on, to wit, the 6th day of April, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of DOUGLAS PARK BOULEVARD ASSESSMENT. 15232.

On motion of the attorney for the said petitioner, it is ordered by the court that the said cause be, and is hereby, reinstated as to all the objections on file herein, and the hearing of said objections is hereby set for May 17, 1898, at ten o'clock a. m.

And afterwards and on, to wit, the 4th day of June, 1898,
49 *nunc pro tunc*, as of the 3d day of June, 1898, certain "additional objections" were filed in said court; which said "additional objections" were in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of the Special Assessment for Improving Douglas Park Boulevard.

By leave of court for that purpose, Wilson, Moore & McIlvaine, attorneys for certain objectors who have heretofore filed their objections herein, and to the objections already filed by them in behalf of the property scheduled in their original objections and not since that time withdrawn, — the following objections—that is to say:

Additional Objections on Behalf of Objectors, Represented by Wilson, Moore & McIlvaine.

First. The said assessment and the proceeding to confirm
50 the same is in violation of the 14th amendment to the Constitution of the United States, and especially that part of section 1 thereof which is as follows:

"No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Second. The said assessment and this proceeding to confirm the same is not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge, or any charge for that purpose, would be without the process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

Third. The ordinance for the making of the said improvement by special assessment upon private property was void, and the said work was done without valid ordinance therefor. The pres-
51 ent ordinance was levied to pay for work already done. The said charge is therefore not authorized by any law, and is in conflict with the guarantees contained in the 14th amendment to the Constitution of the United States, in this, that it would take the property of the said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

Fourth. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

Fifth. The statute of 1895 upon which the present assessment and proceeding are based is in conflict with the provisions of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of said objectors.

WILSON, MOORE & McILVAINE,
Att'ys for Certain Objectors.

52 And afterwards on, to wit, the 4th day of June, 1898, *nunc pro tunc*, as of the 3rd day of June, 1898, there was filed

in said court a certain stipulation; which said stipulation was in words as follows, to wit:

"STATE OF ILLINOIS, } ss:
"*County of Cook,* }

"In the County Court of Cook County.

"In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of Assessment-roll in Special Assessment for Completed Boulevard Improvement of Douglas Boulevard. No. 15232.

"*Stipulation.*

"It is hereby stipulated by and between the petitioners and the objectors represented by Wilson, Moore & McIlvaine that for the purposes of the trial of said cause upon said objection a jury be, and is hereby, waived, and that said cause shall be submitted to the court for trial and disposition without the intervention of a jury.

It is further stipulated and agreed that the objections of said
53 objectors represented by Wilson, Moore & McIlvains shall not be called for trial with the remaining objections in said cause which may be tried before a jury, but shall be passed and tried separately from the issues of the other objectors, the case to be set down and tried upon the request of either party not less than one week after the disposition of the cause as to the other objectors.

"It is further stipulated that the said Wilson, Moore & McIlvaine may file additional objections on behalf of any one or more of their clients, copies of said objections to be delivered to the counsel for the petitioners at least five days before the said cause is to be tried.

"Chicago, May 12th, 1898.

"F. A. RIDDLE,
"H. S. MECARTNEY, *For Petitioner.*
"WILSON, MOORE & McILVAINE."

And afterwards and on, to wit, the 7th day of June, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

54 In the County Court of Cook County.

In the Matter of the Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard. Number 15232.

And now comes the petitioner, and, by leave of the court first had and obtained by order of court of May 17, A. D. 1898, amends its petition as follows:

Strike out the words "on the fourteenth day of July, A. D. 1896," in the paragraph immediately preceding the recital of an ordi-

nance of that date, and insert therein "the fourth day of August A. D. 1896."

And afterwards, on the 4th day of June, *nunc pro tunc*, as of the 3rd day of June, 1898, there was filed in said court a certain motion to cancel assessment; which said motion to cancel assessment was in words and figures as follows, to wit:

"STATE OF ILLINOIS, } ss:
"*County of Cook*, }

"In the County Court of said County.

55 "In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of a Special Assessment for Improving Douglas Park Boulevard.

"Now come the several persons named in the schedule of objections heretofore filed by Wilson, Moore & McIlvaine, representing the property owned by them as described in said schedule, assessed for the present improvement, and move the court to dismiss the said proceeding as to the said property of said objectors for the several and respective reasons mentioned, viz:

"1st. The assessment is unequal and inequitable, in that property which should have been assessed is omitted from the roll.

"2nd. The assessment is made for largely more than the actual cost of the work and of making and levying the assessment.

"3rd. The commissioners have abused their discretion, and have distributed the burden of said expense unfairly and unequally.

"4th. Said ordinance is unreasonable and oppressive, and is therefore void.

56 "5th. Said ordinance is not authorized by law, and is in excess of the powers of the municipality.

"6th. The said assessment and the proceeding to confirm the same is in violation of the 14th amendment to the Constitution of the United States, and especially that part of section one thereof which is as follows:

"'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

"7th. The said assessment and this proceeding to confirm the same is not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment, which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge, or any charge for that purpose, would be without due process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States."

57 "8th. The ordinance for the making of the said improvement by special assessment upon private property was void and the said work was done without valid ordinance therefor. The present ordinance was levied to pay for the work already done. The said charge is therefore not authorized by any law, and is in conflict with the guaranties contained in the 14th amendment to the Constitution of the United States, in this: That it would take the property of the said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

"9th. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895 after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

"10th. The statute of 1895, upon which the present assessment and proceedings are based, is in conflict with the provisions
58 of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of said objectors.

"11th. For each of the other reasons set forth in the objections filed herein on behalf of said respondents.

"WILSON, MOORE & McILVAINE,
"*Att'ys for Certain Objectors.*"

And afterwards, on, to wit, the 7th day of June, 1898, the following proceedings, among others, were had and entered of record in said court, to wit:

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

In re Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard. Number 15232.

And now, on this seventh day of June, A. D. 1898, come the objectors hereinafter described, represented of record herein by
59 Wilson, Moore & McIlvaine, attorneys, and in open court the objections filed in the name of the said attorneys are withdrawn by and for said objectors and as to the property hereinafter described, and thereupon the petitioner moves the court for the confirmation of said assessment as against each and all the said lots, tracts, and parcels of land so described, and it appearing to the court that the said West Chicago Park Commissioners have complied with all the requirements of the law in making said assess-

ment, and also in posting and sending notices to the owners of the property assessed, and that due publication of notice was made, and that due notices, as required by law, *has* been given of this application, and of the making and return of the said assessment, and of the time for the final hearing thereon, and no objection to said assessment having been filed as to the said real estate described below, except such as have hereinabove been withdrawn, and no defense thereto made, it is ordered and adjudged by the court that a default be, and is hereby, entered against each and all the said lots, blocks, tracts, and parcels of land as assessed in the said assessment-roll for said improvement, and that said assessment and
60 all proceedings therein be, and the same are hereby, confirmed as to the said real estate. The real estate and parties so withdrawing objections are set out and described as follows:

Kate Triplett:

Lot 17, in sub of W. ½ N. ½, W. ½ E. ½, S. W. ¼, S. 14, T. 39 N., R. 13 E., of 3d P. M.

John B. Taylor:

Sublot 21, lot 2, block 2, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

William Taylor:

Sublots 22 and 23, lot 2, block 2, in Prescott's Douglas Park addition, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

Dennis J. Daley:

Sublot 5, lot 2, block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

Robert Elliott:

Lots 3 and 4, sub-block 2 of block 5, in Prescott's Douglas Park addition, in S. 23, T. 39 N., R. 13 E., of the 3d P. M.

WILLIAM T. HODSON,
Acting Judge.

61 And afterwards, to wit, on the 10th day of June, A. D. 1898, the following, among other, proceedings were had by and before said court and entered of record as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of said County.

In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of the Special Assessment for Improving Douglas Boulevard.

Order of Confirmation as to Certain Property.

Said cause having come on to be heard upon the objections filed by Wilson, Moore & McIlvaine, attorneys, said objectors moved the court to dismiss the said petition upon the following grounds, to wit:

1st. That the proceeding was in conflict with the 14th amendment to the Constitution of the United States.

2nd. On the ground that the original ordinance for the
62 present improvement, in so far as it provided for the assessment therefor, was void.

3rd. On the ground that the improvement provided for by the original ordinance is double, and that the said improvement as actually laid, for which the present assessment is levied, is double.

Which said motion was denied by the court; to which action of the court counsel for said objectors then and there excepted.

Thereupon the said objectors moved the court to strike out from the said assessment the whole amount thereof in excess of the actual cost of said work and the estimated cost of the present assessment; which motion was denied; to which ruling of the court the said objectors then and there excepted.

Thereupon the said objectors moved the court to strike out of the said assessment-roll all the amounts assessed in this proceeding upon any of the property of said objectors in excess of the amount at which the same was confirmed by the original order and confirmation, entered October 27th, 1893; which motion was denied by the court; to which action of the court the counsel for said objectors then and there excepted.

The said objectors thereupon moved the court to strike out of the said assessment-roll, as to the property of Josiah L. Lom-
63 bard, objected for, all of said assessment in excess of the amount provided for in his contract offered in evidence; which motion was denied; to which action of the court said objector, Josiah L. Lombard, then and there duly excepted.

Said objectors thereupon moved the court to recast the assessment-roll, so as to distribute the cost of said improvement in accordance with the benefits actually derived therefrom, differently from the distribution made by the commissioners in the present roll; which motion the court denied; to which action of the court the said objectors then and there excepted.

And thereupon, said cause having come on to be heard as to all objections of the said objectors, except those triable by jury, the said

objectors objected to the confirmation of the said assessment upon all the grounds contained in the said objections and those above specified other than the objections triable by jury, but the court overruled all the said objections; to which action of the court the objectors then and there excepted.

And thereupon it is ordered that all the objections of the said objectors which are triable before the court without a jury be, and they are hereby, overruled.

The said objections having come on to be heard as to the
64 merits of said assessment-roll, and the parties in open court waived the trial by jury and submitted the cause to the court without a jury, the court, having heard the evidence educed, finds—

That the property of each of the said objectors described in said objections has not been assessed more than it has been specially benefited by the said improvement or more or less than its proportionate share of the cost of said improvement, and that the said assessment-roll as to each and all of the said lots, tracts, and parcels of land described in the said objections should be confirmed; to which finding of the court the said objectors then and there duly excepted.

And thereupon counsel for objectors moved the court to set aside the said finding and for a new trial, which motion was in writing, and is as follows:

"Now come the objectors, represented by Wilson, Moore & McIlvaine, and move the court for a new trial of the said cause and to set aside his findings therein for the following reasons:

"1st. For each of the reasons stated in the several motions and objections heretofore filed by said objectors.

65 "2nd. For that the said finding is not in accordance with the evidence.

"3rd. For that the said finding is not according to law.

"4th. For that the said finding is not authorized by the proceedings in the cause.

"5th. For that the court admitted improper evidence offered by the petitioner and refused to strike the same out of the record.

"6th. For other reasons."

Which motion the court denied; to which action of the court the said objectors then and there duly excepted.

And thereupon the said objectors moved the court in arrest of judgment, on the same grounds stated in the motions and objections heretofore filed, and also on the same grounds stated in the said motion for a new trial; which said motion the court denied; to which action of the court the said objectors, by their counsel, then and there duly excepted.

Whereupon it is here considered and adjudged by the court that the said assessment-roll as to each and all of said lots, tracts, and parcels of land below mentioned should be, and the same is hereby, confirmed—that is to say:

J. L. Lombard:

66 Block 1 (ex. E. 300 ft. and ex. streets), in Douglas Park addition to Chicago, in west half northwest quarter of S. 24, T. 39 N., R. 13 east, of 3rd P. M., assessed.

E. A. Cummings:

Sublot 14 of lot 2, block 1, Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Sublot 14 of lot 2, block 2, Prescott's Douglas Park addition to Chicago aforesaid.

Sublot 1 of lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, a sub of blocks 1, 2, 5, and 10, in circuit court partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Sublot 10, in lot 2, block 5, in Prescott's Douglas Park addition aforesaid.

W. H. Doble:

Lot 15, in sub of W. ½ N. ½, W. ½ E. ½, S. W. ¼, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

J. N. Vance:

Sublot 28, lot "A," B. 2, Vance's Garfield Boulevard addition to Chicago, a sub of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

67 Francis J. Dougherty:

Sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Lambert & Anna J. Tree:

Block 17, in Lambert Tree's sub of the W. ½ of the N. W. ¼ of S. 14, T. 39 N., R. 13 east, of the 3rd P. M.

Estate of Michael Reilly:

Lots 31 to 48, both inclusive, in block 5, Goodwin's subdivision of the N. W. ¼ N. E. ¼, S. 23, T. 39 N., R. 13 east, of the 3rd P. M.

And that as to the said lots, tracts, and parcels of land the said assessment-roll should be, and the same is hereby, confirmed (to which judgment and order of the court the said objectors then and there excepted).

And thereupon the said objectors pray an appeal from the said judgment to the supreme court of Illinois, which is allowed, and it is ordered that the said objectors may, if they so elect, file a joint appeal bond in the penal sum of five hundred dollars ($500.00), and

as many as shall not elect to join in said bond may file their several bonds in the respective sums of two hundred and fifty dollars
68 ($250.00) each, all bonds and security to be approved by the clerk of the court, said bonds and bill of exceptions to be filed within forty (40) days from the entry of this judgment.

And afterwards, on July 8th, 1898, the following proceedings, among others, were had and entered of record in said court, to wit:

"STATE OF ILLINOIS, }
"*County of Cook,* } *ss:*

"In the County Court of Cook County.

"In the Matter of the Petition of WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. No. 15232.

"*Order.*

"On motion of Wilson, Moore & McIlvaine, attorneys for certain objectors in said cause, and the petitioners, by Harry S. Mecartney, their attorney, consenting thereto, it is ordered that Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly
69 be, and they hereby are, substituted in the assessment-roll filed in said cause and in the objections to the confirmation of said assessment filed by Wilson, Moore & McIlvaine on behalf of certain objectors for the estate of Michael Reilly, deceased, *nunc pro tunc*, as of the dates of the filing of said assessment roll and said objections; and, further, that said substitution be, and is hereby, made in all the orders and proceedings had in this cause relating to the property so objected for up to and including the order entered on the tenth day of June, A. D. 1898, granting to said objectors an appeal to the supreme court of Illinois, and all without prejudice to any of their rights as objectors and appellants or to any of the proceedings heretofore had in this cause, and with the same effect as if they had been originally named in said assessment roll and said objections, instead of the estate of Michael Reilly, deceased, and in all the orders and pleadings had in said cause.

"O K.

"O. N. C.

"O K.

"H. S. MECARTNEY,
"*For Petitioner.*"

70 And afterwards, to wit, on the 14th day of July, A. D. 1898, there was filed with the clerk of said court a certain bond in words and figures as follows, to wit:

Know all men by these presents that we, Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary E. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly and Matilda C. Reilly, and Silas M. Moore, of the county of Cook and State of Illinois, are held and firmly bound unto the West Chicago Park Commissioners, also of the same county and State, in the penal sum of five hundred dollars ($500.00), lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 14th day of July, A. D. 1898.

The conditions of the above obligation *is* such that whereas the said West Chicago Park Commissioners did on the tenth (10th) day of June, A. D. 1898, in the county court of Cook county, in the State aforesaid, and of the May term thereof,
71 A. D. 1898, recover a judgment against the above-bounden Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, in the nature of a judgment of confirmation of a special assessment levied against the property of said obligors, in a certain special assessment proceeding in said county court, entitled In the matter of the petition of West Chicago Park Commissioners to improve "Douglas boulevard," and number- on the docket thereof No. 15232, from which said judgment of the said county court of Cook county the said Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly have prayed for and obtained an appeal to the supreme court of Illinois:

Now, therefore, if the said Josiah L. Lombard, Edmund A. Cummings, W. H. Doble, J. Nelson Vance, Francis J. Dougherty,
72 Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly shall duly prosecute their said appeal with effect and, moreover, pay the amount of the judgment for costs, interests, and damages to be rendered against them and each of them in case the said judgment of confirmation shall be affirmed — the said supreme court, then

the above obligation to be void; otherwise to remain in full force and virtue.

JOSIAH L. LOMBARD. [SEAL.]
ANNA J. TREE, [SEAL.]
By HOWARD G. GREY, *Her Agent.*
LAMBERT TREE, [SEAL.]
By HOWARD G. GREY. *His Agent.*
EDMUND A. CUMMINGS, [SEAL.]
FRANCIS J. DOUGHERTY, [SEAL.]
By WALTER G. MOORE, *Att'y-in-fact.*
MICHAEL REILLY, JR., [SEAL.]
GEORGE V. REILLY, [SEAL.]
HELEN M. JAMISON, [SEAL.]
AGNES G. REILLY, [SEAL.]
CHARLES J. REILLY, [SEAL.]
73 JOSEPHINE T. REILLY, [SEAL.]
MARY C. REILLY, [SEAL.]
HELEN C. REILLY, [SEAL.]
MICHAEL A. REILLY, [SEAL.]
THOMAS W. REILLY, [SEAL.]
MATILDA C. REILLY, [SEAL.]
By WALTER G. MOORE,
Their Attorney-in-fact.
J. NELSON VANCE, [SEAL.]
W. H. DOBLE, [SEAL.]
SILAS M. MOORE, [SEAL.]
By E. A. CUMMINGS, *Their Agent.*

O K.
H. S. MECARTNEY.

Approved this 14th day of July, A. D. 1898.
PHILIP KNOPF, *Cl'k.*

And afterwards, to wit, on the 18th day of July, A. D. 1898, there was filed with the clerk of said court a certain bill of exceptions in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Application of THE WEST PARK COMMIS-
74 SIONERS for Confirmation of the Assessment for Improving Douglas Park Boulevard. No. 15232.

Objections of Wilson, Moore & McIlvaine.

Stipulation.

It is stipulated by the parties hereto that the original bill of exceptions herein may be inserted in the record in lieu of a copy thereof.

WILSON, MOORE & McILVAINE.
H. S. MECARTNEY.

July 14th, 1898.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Application of THE WEST CHICAGO PARK COMMISSIONERS for Confirmation of the Special Assessment for Improving Douglas Boulevard. 15232.

Hearing of objections filed by Wilson, Moore & McIlvaine.

75 *Bill of Exceptions.*

Be it remembered that on the third day of June, A. D. 1898, being one of the days of the May term, A. D. 1898, of said court, the said cause above entitled came on to be heard as to the property described in the objections filed by Wilson, Moore & McIlvaine before the undersigned judge, presiding—that is to say, as to the property scheduled below:

1. J. L. Lombard:

Block 1 (ex. E. 300 feet and ex. streets), in Douglas Park addition to Chicago, in west half northwest quarter, S. 24, T. 39 N., R. 13 E., of 3rd P. M.

2. E. A. Cummings:

Sublot 14 of lot 2, block 1, Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

Sublot 14 of lot 2, block 2, Prescott's Douglas Park addition to Chicago aforesaid.

Sublot 1 of lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, a sub of blocks 1, 2, 5, and 10, in circuit court
76 partition of E. ½ N. E. ¼ and E. ½ S. E. ¼ of S. 23, T. 39 N., R. 10 east, of 3rd P. M.

Sublot 10, in lot 2, in block 5, in Prescott's Douglas Park addition aforesaid.

3. W. H. Doble:

Lot 15, in sub of W. ½ N. ½, W. ½ E. ½, S. W. ½, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

4. J. N. Vance:

Sublot 28, lot "A," B. 2, Vance's Garfield Boulevard addition to Chicago, a sub of part of blocks 1 and 2, in circuit court partition of W. ½ S. W. ¼, S. 14, T. 39 N., R. 13 east, of 3rd P. M.

5. Francis J. Dougherty:

Sublot 6, in lot 2, in block 5, in Prescott's Douglas Park addition to Chicago, in S. 23, T. 39 N., R. 13 east, of 3rd P. M.

6. Lambert & Anna J. Tree:

Block 17, in Lambert Tree's sub of the W. ½ of the N. W. ¼ of S. 14, T. 39 N., R. 13 east, of the 3rd P. M.

7. Estate of Michael Reilly:

77 Lots 31 to 38, both inclusive, in block 5, Goodwin's subdivision of the N. W. ¼ N. E. ¼, S. 23, T. 39 N., R. 13 east, of the 3rd P. M.

Upon said hearing the said objectors moved the court, through their counsel, for leave to file the following additional objections:

First. The said assessment and the proceeding to confirm the same *is* in violation of the 14th amendment of the Constitution of the United States, and especially that part of section 1 thereof which is as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Second. The said assessment and this proceeding to confirm the same *is* not authorized or justified by any valid ordinance for making the improvement in question and paying the cost
78 thereof by special assessment which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge or any charge for that purpose would be without the process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

Third. The ordinance for the making of the said improvement by special assessment upon private property was void, and the said work was done without valid ordinance therefor. The present ordinance was levied to pay for work already done. The said charge is therefore not authorized by any law, and is in conflict with the guaranties contained in the 14th amendment to the Constitution of the United States in this, that it would take the property of the said objectors without due proeess of law, and that it would deny to the said objectors the equal protection of the laws.

Fourth. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary
79 to the provisions of the 14th amendment to the Constitution of the United States and would deprive the said objectors of their property without due process of law and would deny to the said objectors the equal protection of the laws.

Fifth. The statute of 1895, upon which the present assessment and proceeding are based, is in conflict with the provisions of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of said objectors.

To which motion counsel for the petitioners objected, and thereupon counsel for the said objectors presented to the court a stipulation, previously executed, which is as follows:

"It is hereby stipulated by and between the petitioners and the objectors represented by Wilson, Moore & McIlvaine that for the purposes of the trial of said cause upon said objections a jury be, and is hereby, waived, and that said cause shall be submitted to the court for trial and disposition without the intervention of a jury.

It is further stipulated and agreed that the objections of said
80 objectors represented by Wilson, Moore & McIlvaine shall not be called for trial with the remaining objections in said cause which may be tried before a jury, but shall be passed and tried separately from the issues of the other objectors, the case to be set down and tried upon the request of either party not less than one week after the disposition of the cause as to the other objectors.

"It is further stipulated that the said Wilson, Moore & McIlvaine may file additional objections on behalf of any one or more of their clients, copies of said objections to be delivered to the counsel for the petitioners at least five days before the said cause is to be tried.

"Chicago, May 12th, 1898.

"F. A. RIDDLE.
"H. S. MECARTNEY.
"WILSON, MOORE & McILVAINE."

Which said stipulation was filed and thereupon leave was granted to said objectors to file the said objections, which were then and there duly filed.

At the same time the said objectors presented a motion in writing, a copy of which is as follows:

"Now come the several persons named in the schedule of objections heretofore filed by Wilson, Moore & McIlvaine, repre-
81 senting the property owned by them as described in said schedule, assessed for the present improvement, and move the court to dismiss the said proceeding as to the said property of said objectors for the several and respective reasons mentioned, viz:

1st. The assessment is unequal and inequitable in that property which should have been assessed is omitted from the roll.

2nd. The assessment is made for largely more than the actual cost of the work and of making and levying the assessment.

3rd. The commissioners have abused their discretion and have distributed the burden of said expense unfairly and unequally.

4th. Said ordinance is unreasonable and oppressive, and is therefore void.

5th. Said ordinance is not authorized by law, and is in excess of the powers of the municipality.

6th. The said assessment and the proceeding to confirm the same *is* in violation of the 14th amendment to the Constitution of the United States, and especially that part of section one thereof which is as follows:

82 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property

without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

7th. The said assessment and this proceeding to confirm the same *is* not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment, which was passed or in existence prior to the actual making of the said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the said charge, or any charge for that purpose, would be without due process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

8th. The ordinance for the making of the said improvement by special assessment upon private property was void and the said work was done without valid ordinance therefor. The present ordinance was levied to pay for the work already done. The said charge is therefore not authorized by any law, and is in
83 conflict with the guaranties contained in the 14th amendment to the Constitution of the United States, in this: That it would take the property of the said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

9th. The only statute upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

10th. The statute of 1895, upon which the present assessment and proceeding are based, is in conflict with the provisions of section 1 of the 14th amendment to the Constitution of the United States, and is therefore no- sufficient authority for the imposition of the charge hereby contemplated upon the property of said objectors.

11th. For each of the other reasons set forth in the objections filed herein on behalf of the said respondents."

Which motion was filed in said cause.

Thereupon the petitioners, to maintain the issues on their
84 part, offered in evidence an ordinance passed by the West Chicago Park Commissioners on March 28th, 1893, which is as follows:

The Ordinance of West Chicago Town Board of March 28th, 1893.

An ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the city of Chicago, town of West Chicago, county of Cook and State of Illinois.

Whereas, the West Chicago Park Commissioners have under their control a certain boulevard or pleasureway known as Douglas boulevard, or Douglas Park boulevard, lying and situate between the southeasterly line of Garfield park (formerly known as Central park) and running thence south for a distance of 4,250 feet, more or less, to a point in sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its
85 intersection with the west line of Douglas park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago park commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, said West Chicago Park Commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans, specifications and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

Whereas, said West Chicago Park Commissioners have made plans, specifications and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications and estimates of the cost of such improvement as provided by law; and,

Whereas, said board of West Chicago Park Commissioners
86 have also submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

Whereas, the corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land fronting on Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield park to the west line of Douglas park, as provided by law;

Now, therefore, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act

of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield park to the west line of
87 Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

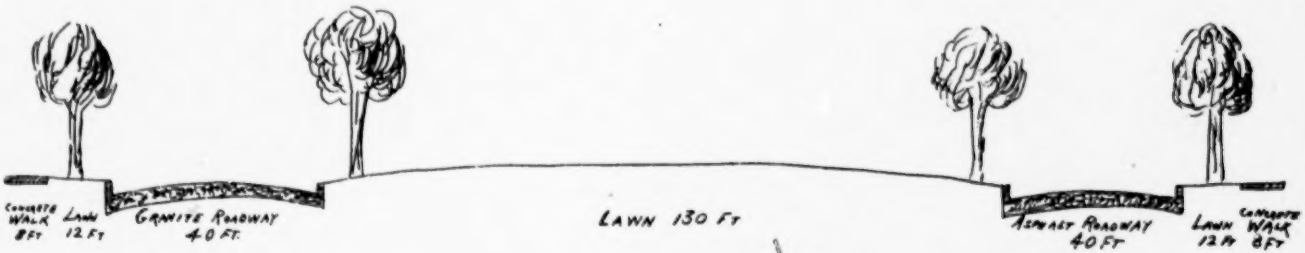
SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago Park Commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below
88 the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand, gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces, and all fresh filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

SECTION 4. That the supervisor of the town of West Chicago proceed*ed* at once to file a petition in the name of the town in the county court of Cook county for proceedings to assess the cost of the improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago Park Commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

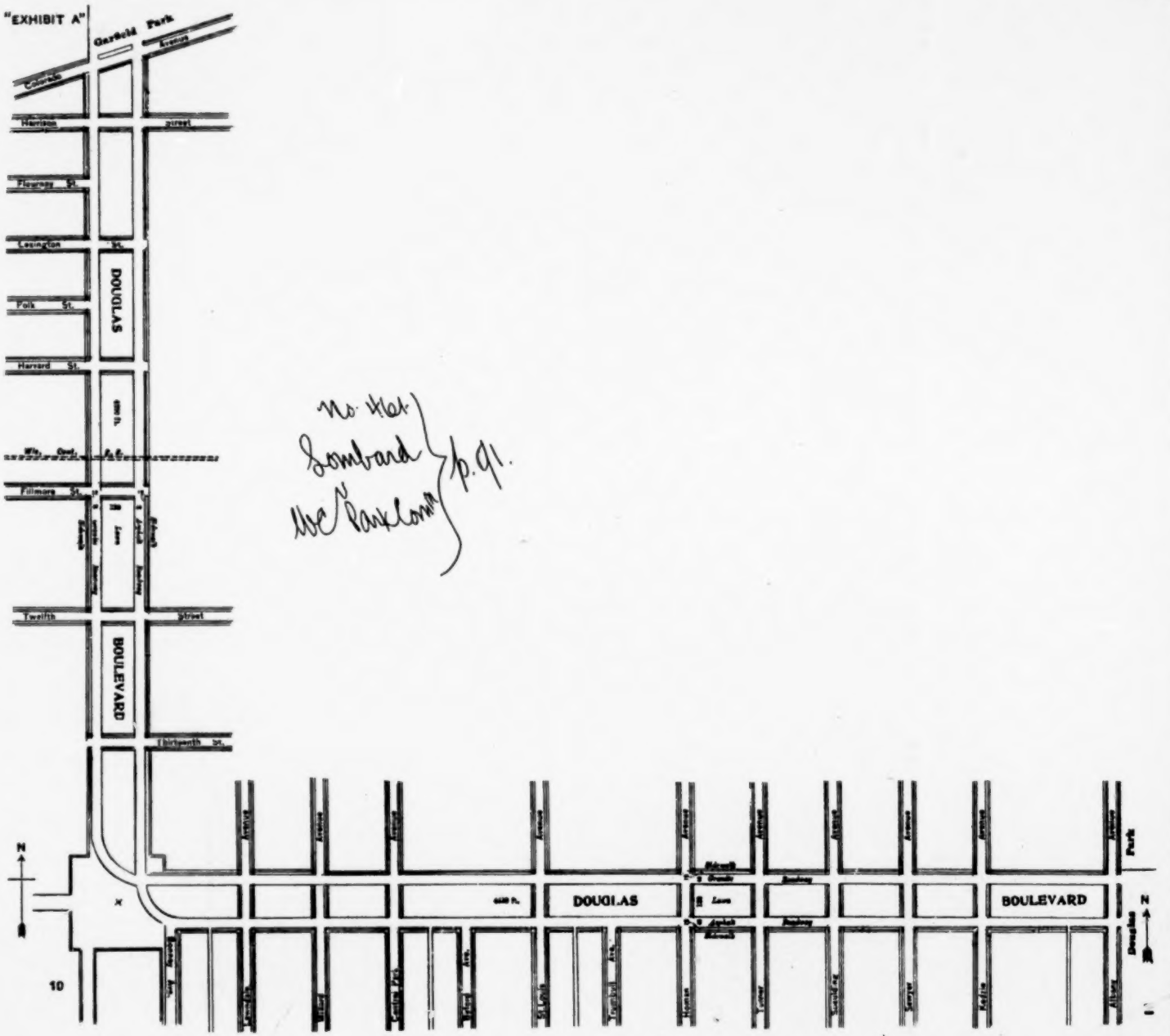
1886

No 461.
Lombard et al
vs.
W.C. Park Com'r
p. 90



CROSS SECTION of DOUGLAS BOULEVARD

IMPROVEMENT



no. Hist
Lombard
Ave Parkland
p. 91.

STATE OF ILLINOIS, } ss:
Cook County, Town of West Chicago, }

I, Mortimer J. Scanlan, town clerk of the town of West Chicago, in the county of Cook and State of Illinois, do hereby
89 certify that the annexed and foregoing is a true and correct copy of an ordinance adopted and passed by the corporate authorities of the said town of West Chicago, said corporate authorities being the town supervisor, the town clerk, and assessor of said town, at a special meeting held for that purpose by said corporate authorities, at the town office of said town of West Chicago, on the 28th day of March, 1893, which said ordinance was on that day duly filed and entered upon the records of the said town of West Chicago.

MORTIMER J. SCANLAN,
Town Clerk.

Also the plats thereto attached marked "Exhibit A," which are as follows:

(Here follow diagrams marked pp. 90 & 91.)

92 Also the specifications which were a part thereof *which were a part thereof* and were as follows, marked "Exhibit B:"

Specifications.

Specifications for the improvement of Douglas boulevard (or Douglas Park boulevard), lying and situate between the southeasterly line of Garfield park, formerly known as Central park, and running thence south for a distance of 4,250 feet, more or less, thence due east a distance of 4,490 feet, more or less, to the west line of Douglas park.

The improvement hereby provided for shall be made for and under the superintendence of the West Chicago Park Commissioners and shall consist of the following, viz:

Common filling to bring the boulevard to a proper grade.

Black soil to complete the surface of the lawns.

One asphalt roadway with combined curb and gutter, 40 feet in width the entire length of the improvement.

Finishing the present roadway 40 feet in width with crushed granite and gravel top dressing, and combined curb and gutter.

A limestone macadam pavement with granite top dressing connecting the present roadway with all intersecting streets.

A cement combined curb and gutter on each side of each roadway and on each side of each intersecting street.

93 A cement sidewalk 8 feet in width, in front of and adjoining the line of all the lawns fronting on said boulevard.

A cement sidewalk 6 feet in width on all the returns of intersecting streets.

Gas-lamp posts and lamps on each side of each boulevard.

Trees along the driveway on the east and south sides of said boulevard.

Catch-basins and connections along each of said driveways.

All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance shall be filled with clay, earth, sand, gravel or cinders, free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces and all fresh filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

94 Sidewalks.

The surface of the boulevard for a space of eight (8) feet in width on each side of the boulevard next to and adjoining the lot lines, between the lines of the return curbing on all intersecting streets and alleys and the space of six (6) feet in width parallel with the lines of all intersecting streets projected between the outside sidewalk line and the curbstone line on said boulevard, shall be designated as the sidewalk spaces, and shall be brought to ten (10) inches below the established grade. Upon the above-described sidewalk space shall be laid a cement, concrete composition sidewalk, of a uniform light shade, constructed as follows: The space, when brought to the above-designated grade, shall be covered with a layer of cinders to such depth that, when thoroughly compacted by flooding, tamping and rolling, it will have a thickness of six (6) inches. On this foundation shall be laid a bed three (3) inches in thickness of Portland cement concrete, composed of five (5) parts fresh limestone, of a size not to exceed three-fourths (¾) of an inch, three (3) parts torpedo gravel, and one (1) part of the best quality of imported Portland cement, of a standard brand to be approved by the West Chicago Park Commissioners or their engineer,

95 the brand adopted to be used throughout the entire work.

This composition to be mixed according to the careful measurement of the nine (9) different parts, the cement and torpedo gravel to be first thoroughly mixed dry and then wetted only enough to form a stiff mortar, into which shall then be incorporated the five (5) parts of crushed limestone. This concrete shall then be spread on the foundation and rammed until free mortar appears on the surface, each batch to be used at once and not allowed to dry in the mortar box.

On this composition, and before the surface shall have dried, shall be laid a wearing surface one (1) inch in thickness, composed of one-half (½) fine crushed granite and one-half (½) Portland cement, of the same brand as used in the foundation. This layer to be floated perfectly smooth on the upper surface, and to be a perfect plane, with no depressions whatever. Joints shall be cut according to directions of the engineer, and indented according to directions

of the engineer, and indented finish shall be given each slab with a heavy brass or iron roller. The contractor or contractors shall execute a satisfactory bond, warranting the work so constructed against cracks, discolorations, upheaval, chipping, scaling, or
96 settlement, for a period of five (5) years from and after its completion, and that he or they will maintain said walk in perfect repair during that period of time, and all repairs necessary shall be determined upon by the said West Chicago Park Commissioners.

Lines drawn respectively twenty (20) and sixty (60) feet from the lot line on each side of said boulevard between the projected curb lines of all intersecting streets and the projected lines of all intersecting or connecting alleys and thence on said projected line to the nearest lot line on said boulevard shall be denominated as the curb lines of said boulevard.

Lawns and trees.

All spaces between the sidewalk space, as above described, up to and within six (6) inches of the curb line above described shall be improved as a lawn. It shall be brought to the established grade and the final twelve (12) inches shall be composed of black vegetable or sandy loam, free from decaying substances, stones or any other foreign material. It shall be carefully leveled off and seeded with the best quality of grass seed. Nursery-grown elm
97 trees which at a point one (1) foot above the surface of the ground shall measure not less than four (4) inches in diameter of uniform height, with good, well-balanced tops, shall be set at intervals of not less than thirty (30) nor more than forty (40) feet between the curb lines and the sidewalk space on the east and south sides of said Douglas boulevard or Douglas Park boulevard, said trees to be guaranteed for a term of three (3) years from the time of planting. The earth surrounding the roots of each tree to a radius of four (4) feet and to a depth of two and one-half ($2\frac{1}{2}$) feet shall be composed of black earth of the character above described for the lawn.

Curb & gutter.

A space of twenty-four (24) inches in width of which space six (6) inches shall be between the curb line and the lot line shall be brought to twelve (12) inches below the grade line established by the engineer of the West Chicago Park Commissioners for the gutter surface. Upon this shall be laid a layer of cinders to such depth that when thoroughly compacted by flooding, and tamping it will have a thickness of seven (7) inches. Upon this foun-
98 dation shall be laid a granite, concrete combined curb and gutter, constructed as follows:

The gutter flag shall be eighteen (18) inches in width and five (5) inches in thickness and the curbing shall be six (6) inches in thickness and not less than five (5) inches in height above the gutter flag at the summits between catch-basins. The top of the curb and the upper surface of the gutter flag shall be laid at the grades desig-

nated by the engineer of the West Chicago Park Commissioners. The upper inside edge of the curb shall be rounded to a radius of two and one-half (2½) inches. The combined curb and gutter shall be laid in alternate blocks not less than six (6) nor more than eight (8) feet long, except the corners of the intersecting streets and alleys where the blocks shall be of the length directed by the engineer of the West Chicago Park Commissioners, and rounded at said corners to such radius as he may direct. Said combined curb and gutter shall be made of concrete, consisting of one (1) part of best quality imported cement of a standard brand to be approved by the West Chicago Park Commissioners or their engineer, two and one-half (2½) parts of fine-crushed granite, and two and one-half (2½) parts of broken granite, not larger than will pass a one and one-half (1½) inch ring. This concrete shall be mixed on a clean board surface as follows:

99 The cement and fine-crushed granite shall be thoroughly mixed dry, then wetted to form a stiff mortar, into which shall be incorporated the two and one-half (2½) parts of broken granite, which shall previously have been flooded with water. This concrete shall then be thoroughly tamped into the molds or form prepared for that purpose, so as to form a solid mass, upon which shall be spread at once enough of a surface mixture composed of two (2) parts of the same cement as used for the concrete, and three (3) parts of fine granite screenings mixed dry, and then wetted enough to form a plastic mass, to insure a smooth even surface on all faces and parts of said curb and gutter which will be exposed after the completion of the improvement herein ordered. The gutter flags shall be laid to a lateral pitch corresponding with the angle towards the crown of the street, and the surface shall be smooth and laid to a true line from summit to catch-basin. Uniform openings shall be made at all catch-basins. The contractor or contractors laying said combined curb and gutter shall guarantee the same against cracking, chipping, scaling, settling or upheaval for the term of five (5) years from and after its completion, which

100 guaranty shall also include and cover any injury or displacement from the true line and grade occurring in and about or because of the building of the roadway hereinbefore and hereinafter provided for.

Roadways.

The space between the gutter flags, being thirty-seven (37) feet in width along the east and south side of said boulevard and between the return gutter flags on all intersecting streets and alleys up to the projected lot lines, shall be paved with an asphaltum roadway constructed as follows:

The road-bed for said pavement, after having been filled by the West Chicago Park Commissioners, shall be leveled and graded by the contractor or contractors laying said pavement to a grade eight and one-half (8½) inches below the final grade of said roadway as established by the West Chicago Park Commissioners or their engineer, and shall be thoroughly rolled with a steam roller weighing

not less than ten (10) tons. The crown of said roadway shall not exceed five (5) inches at the summit between catch-basins.

101 Upon this surface shall be laid a foundation of hydraulic cement concrete six (6) inches in thickness, to be made as follows:

One measure of best quality freshly burned American cement and two measures of clean, sharp, washed sand, free from clay, shall be first thoroughly mixed dry and then made into mortar with the least possible amount of water. Broken stone of a size not to exceed two and one-half (2½) inches in their largest diameters, drenched with water, but containing no loose water in the heap, shall be incorporated immediately with the mortar in such quantities as will give a surplus of mortar when rammed. This proportion, when ascertained, shall be regulated by measure. Each batch of concrete shall be thoroughly mixed, the mixing being continued on the board until each peace of stone is completely coated with mortar. It shall then be spread and at once thoroughly compacted by ramming until free mortar appears upon the surface. The whole operation of mixing and laying each batch shall be performed expeditiously. The upper surface shall be made parallel with the surface of the pavement to be laid. Across all intersecting streets and alleys on a line with the lot lines projected, shall be laid on edge an oak plank or header, three (3) inches thick and twelve (12) inches wide, to serve as a protection to the lateral edges of

102 the pavement to be laid. On the foundation thus prepared and as above described shall be laid the wearing surface or pavement proper, which shall have a thickness, after having received its ultimate compression, of two and one-half (2½) inches. This pavement shall be composed and laid as follows:

Refined Trinidad asphalt, obtained from the pitch or asphalt lake in the island of Trinidad, residuum of petroleum oil by distillation, fine sand containing not more than one (1) per cent. of hydrosilicate of alumina and fine powdered carbonate of lime. The petroleum oil shall be freed from all impurities and brought to a specific gravity of not less than eighteen (18) nor more than twenty-two (22) degrees Beaume and to a fire-test of two hundred and fifty (250) degrees Fahrenheit. The matrix of the pavement called asphaltic cement shall be manufactured by molding and mixing the two hydrocarbons known as the residuum of petroleum oil and refined Trinidad asphaltum, and the asphaltic cement when so made shall have a fire-test of two hundred and fifty (250) degrees Fahrenheit, and at a temperature of sixty (60) degrees Fahrenheit, shall have a specific gravity of one and nineteen-hundredths (1.19).

103 The above-specified ingredients for making the asphaltic pavement to be used upon said roadway shall be mixed in the following proportions of weight:

Of pure refined Trinidad asphalt one hundred (100) parts; of residuum of petroleum oil by distillation, sixteen (16) parts. The asphaltic cement having been made in the manner above described, shall be formed into a paving mixture by combining and mixing the following materials in the proportions here stated, to wit:

Asphaltic cement, not more than sixteen (16), nor less than thirteen (13) parts; sand, not more than eighty (80), nor less than seventy-four (74) parts; and pulverized carbonate of lime not more than ten (10) nor less than seven (7) parts.

In order to make the pavement homogeneous, the proportion of asphaltic cement may be varied within the limits aforesaid, according to the quality and character of the sand. The sand and asphaltic cement shall be heated separately to three hundred (300) degrees Fahrenheit. The pulverized carbonate of lime while cold shall be mixed in the hot sand in the above-required proportions, and shall then be mixed with the asphaltic cement at the required temperature in an apparatus which will effect a perfect mixture. This paving mixture shall be brought to the ground at a temperature of not less than two hundred and forty (240) nor more than three hundred (300) degrees Fahrenheit. It shall then be
104 carefully spread by means of hot iron rakes in such a manner as to give a uniform and regular surface and to such depths that after having received its ultimate compression by rolling it will have the thickness above specified. The surface shall then be compressed by hand rollers, after which hydraulic cement in the proportion of not less than one barrel to each thousand yards of surface shall be spread over the surface to bring it to a uniform light color, and the surface shall then be thoroughly compressed by a steam roller, weighing not less than ten (10) tons, the rolling being continued for not less than five (5) hours for every thousand yards of surface. Said work shall be executed under the official inspection of the board of West Chicago Park Commissioners. The contractor or contractors doing the work shall be required to guarantee that the pavement shall be and continue at all times in good condition, extraordinary wear and tear excepted, during and at the end of a period of five (5) years, from and after its completion.

The space between the gutter flags being thirty-seven (37) feet in width along the west and north sides of said boulevard, shall have a top dressing of fresh granite. The present roadway shall be brought to a grade four (4) inches below final grade of said
105 roadway when completed, and upon said surface shall be spread granite macadam of the size known as "medium," to be covered with a coating of screened bank gravel in the proportion of not less than one cubic yard to each eighteen (18) square yards of the surface of the roadway for the purpose of binding said granite macadam; upon this shall be spread a coating of fine crushed granite, said granite macadam when finished to be of a depth of four (4) inches, the surface of the same shall be thoroughly rolled with a steam roller, weighing not less than ten (10) tons, the rolling being continued until said macadam material shall have received its ultimate compression. The material on the present roadway that it becomes necessary to remove, to bring the surface of said roadway to said grade of four (4) inches below the final grade shall be used to bring all places in said roadway that are now below the said grade of four (4) inches up to said grade, and should there not be enough of said surplus material for said purpose, crushed lime-

stone shall be used, being composed of crushed limestone, thoroughly screened and of a size not to exceed two (2) inches in greatest diameter.

The space between the gutter flags on intersecting streets and between the line of the roadway last above described and the
106 nearest projected line of said boulevard shall be filled to within ten (10) inches below the final grade of said intersections, and the filled space be thoroughly rolled with a steam roller weighing not less than ten (10) tons. On the surface so prepared shall be spread and thoroughly rolled with a steam roller, as above described, thoroughly screened limestone macadam or crushed limestone of a size not to exceed two and one-half ($2\frac{1}{2}$) inches in the largest diameter to a depth of six inches. Upon this limestone macadam shall be laid a granite macadam top dressing, prepared and laid exactly as above specified for the granite top dressing of the roadway last above mentioned.

Catch-basins.

Forty-two catch-basins shall be constructed along the line of each of the described roadways on the side of the said roadway opposite the nearest lot line; to be built at the lowest points of the gutter lines between the summits. Said catch-basin shall be four (4) feet in internal diameter, built of two rings of brick upon a floor of two (2) inch common pine planks each catch-basin to be constructed with nine (9) inch half strap and connected with the sewer
107 with nine (9) inch pipe. The brick-work shall be seven (7) feet, two inches deep, the top of the cover shall be set at the grade of the boulevard where the basin is located. All covers used shall be of good-quality, cast iron. All covers shall be of the city pattern and of the same weight and pattern as the covers now in use in the lawns of West 12th street and Ogden Avenue boulevards.

Lamp posts and lamps.

A row of gas lamp posts and lamps shall be placed on each side of each boulevard throughout the whole length of the improvement herein provided for, such lamp posts shall be connected with the gas mains, and set one hundred (100) feet apart in the lawn space two (2) feet from the curb line; the lamps to be of the pattern known as the boulevard lamp.

Materials.

The contractor for each of such materials will furnish and deliver the same, performing the work incident thereto when and where directed by the engineer in charge.

108 Pipe.

Each class of work to be commenced within five (5) days after written notice from the secretary of the West Chicago Park Commissioners, and to proceed regularly and uninterruptedly to com-

pletion within the time agreed upon in the contract to be awarded, unless otherwise ordered by the engineer in charge.

Payments.

Payments are to be made upon monthly estimates furnished to the board of West Chicago Park Commissioners by their engineer, and approved at any regular meeting of said board, in sums of not less than one thousand dollars ($1,000) for each estimate except as to the final estimate. Fifteen (15) per cent. of each estimate to be deducted and withheld until the final completion and acceptance of said work by said park commissioners. All of the material furnished and all of the work done under these specifications must be first class in all respects, and the West Chicago Park Commissioners shall decide all matters arising in reference to said material, or work done, or the quality or character thereof.

109 Also an ordinance of West Chicago Park Commissioners of August 4, 1896 (offered by petitioner, *supra*), which is as follows:

For a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the West Chicago Park Commissioners in regular meeting assembled:

SEC. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates, transmitted by said West Chicago Park Commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special
110 assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the county court of Cook county, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case number 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore, and on the 28th day of March, A. D. 1896, declared void by the supreme

court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers, and superintendence of work; now

111 Therefore, be it ordained:

SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

SEC. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SEC. 4. This ordinance shall be in force from and after its passage.

Also the following resolution:

"Be it resolved and ordered, That the following estimate be adopted as the estimate of this board, of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park, to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost

112 of said improvement, in accordance with the act in said ordinance mentioned."

Also the estimate, which is as follows:

Estimate of Cost of Improvement and Report Thereon.

The following is an estimate made by the West Chicago Park Commissioners of the cost of the boulevard improvement on Douglas boulevard from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, said estimate being made in pursuance of an ordinance of the West Chicago Park Commissioners passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement; which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners relating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

113 *Estimate.*

Asphalt paving	$110,420.71
Macadam paving	35,087.81
Combined curb and gutter	28,045.34
Cement sidewalk	24,262.26
Filling	17,290.20
Trees	1,110.30
Catch-basins and connections	3,819.59
Gas-lamp connections	2,106.00
Manhole covers, sand, cement, brick, pipe	1,066.89
General labor, teaming, engineering, surveying, and inspection	19,770.51
Expense of making and levying this assessment	7,287.59
Total cost of improvement	$250,207.20"

The petitioners also offered in evidence the assessment-roll on file in the cause; which assessment-roll is the same contained in the record of the cause and is here omitted by agreement of parties.

In connection with the testimony of the petitioners, it was conceded that the said boulevard was completed in its present
114 condition before the petition in this cause was filed.

It was also, in connection with the said testimony, agreed between the parties that the said ordinance passed by the said park commissioners March 28th, 1893, was the same ordinance which was in question and considered by the supreme court in the case of Culver *vs.* The People, 161 Ill., page 89.

To the evidence above offered the objectors objected for the reasons following:

1st. That the original ordinance for the said improvement, dated March 28th, 1893, was wholly void and furnished no lawful basis for the making of the said assessment nor for the said proceedings.

2nd. That the ordinance of August 14th, 1896, gives no particulars for the said improvement, and for that reason, among others, is not in accordance with the terms of the statute.

3rd. That the estimate upon which this assessment was based was not authorized by law under the circumstances, the work having all been done at the time the ordinance was passed.

4th. No showing has been made of the actual cost of the
115 present improvement, and that cost, under the circumstances, is the only lawful basis for the assessment.

5th. That no petition of property-owners is proven, as required by the statute of 1873.

6th. The other statutory requirements have not been proven.

All of which objections were overruled; to the ruling of the court upon each of which said objections counsel for the objectors then and there duly excepted.

Petitioners thereupon rested.

Thereupon the said objectors moved the court to dismiss the said petition for the reasons:

1st. That the preliminary statutory requirements have not been shown to have been complied with.

2nd. For each of the reasons mentioned in the objections filed by said objectors.

3rd. For each of the reasons stated in the written motion filed by said objectors and above herein set forth.

4th. On the ground that the improvement provided for in the ordinance is double; that the ordinance is therefore defective.

And said objectors called the court's attention to the 14th
116 amendment to the Constitution of the United States, and contended that the present assessment on the property of each of the said objectors was contrary to the provisions of the said 14th amendment in two respects—*i. e.:*

1st. That it imposed an unlawful burden upon said objectors and deprived them of their property without due process of law.

2nd. That it denied these objectors the equal protection of the laws.

Which said motion to dismiss, being considered by the court upon all the grounds above mentioned, was denied; to which ruling of the court upon said motion the said objectors severally, by their counsel, then and there duly excepted.

Thereupon the said objectors, by their counsel, moved the court to strike out of the said assessment-roll all the amount included therein in excess of the actual cost of the said work, and desired the court to retain the said motion and consider the same in view of the evidence which would be produced upon that point; and the court thereupon stated that it would hear all motions or legal objections which counsel sought to make, but would pass upon them all in turn at the conclusion of the evidence.

117–208 Thereupon counsel further moved the court to strike out from the said assessment-roll all the amount included therein in excess of the amount for which the original assessment was confirmed against the property described in said objections by the general order of confirmation entered at the June term, 1893.

Counsel for said objectors also moved the court to recast the assessment-roll as to the property of said objectors (and others, if the court thought necessary), so as to distribute the said cost upon the property assessed in proportion to the benefits derived by the said improvement.

And the said objector, Josiah L. Lombard, by his counsel, moved the court to strike out all the assessment against his property described in said assessment-roll and in said objections, in excess of $1,000, pursuant to an agreement with him by the petitioners for that purpose; and the said objector, Lombard, further moved the court, in case the said motion last above mentioned should be denied, to strike out from said assessment against his property the whole amount assessed against it in excess of $3,000.

And thereupon, in support of said motions and in pursuance of the direction of the court above stated, the objectors offered the following evidence:

209 * * * * * * *

Which portion of said judgment is as follows:

"And the court, being fully advised in the premises and having full jurisdiction of the subject-matter of the said assessment
210 and of all the parties interested therein, further finds:

That Josiah L. Lombard is the owner of the west 383½ feet (except the west 33 feet thereof, and also except the east 66 feet of the west 365 feet thereof) of lot or block 1 of Douglas Park addition, in section 24, township 39 north, range 13 east, of the third principal meridian; that said west 300 feet of said lot or block 1 is contiguous to and abutting upon said Douglas boulevard so proposed to be improved.

And the court further finds that the said Josiah L. Lombard, by consent in open court, has agreed that said west 300 feet of said lot or block 1, in said Douglas Park addition to Chicago, should be included in the assessment-roll made and filed by the commissioners heretofore appointed by this court in this cause, and that said west 300 feet of said lot or block 1, so owned by said Josiah L. Lombard, is specially benefited to the extent of $1,000 by reason of the proposed improvement of said boulevard.

And the court therefore, upon the consent in open court of the said Josiah L. Lombard, orders and directs that the said west 300 feet of said lot or block 1, in said Douglas Park addition,
211–309 so owned by the said Josiah L. Lombard, be specially taxed the sum of $1,000 for benefits accruing to said parcel of land by reason of said proposed improvement of said boulevard.

And the court further orders that said sum of $1,000 so specially taxed and levied, by and with the consent of the said Josiah L. Lombard, against said parcel of real estate last above described for benefits resulting thereto by reason of said improvement be, and the same is hereby, confirmed as a just, valid, and binding special tax against said parcel of land for the uses and purposes aforesaid, which said sum of $1,000 is to be enforced and collected against said parcel of real estate so owned by the said Josiah L. Lombard in the manner provided by law."

* * * * * * *

310 To the honorable the judge of the county court of said county:

Your petitioner, The Town of West Chicago, being a regularly organized and existing township in the county of Cook and State of Illinois, under and by virtue of the statutes of said State providing for township organization, respectfully petitions this honorable court, in accordance with the statutes in such case made and provided, as follows:

Your petitioner shows that the West Chicago Park Commissioners, — now existing in a town which is now included within the limits of the city of Chicago and State of Illinois, having authority by law to acquire land and the appurtenances, in trust, for the inhabitants of such town and of a division or a part of such city and of such parties or persons as may succeed to the rights of such inhabitants, and for the purpose of a public promenade and pleasure

grounds and ways, but not for any other use or purpose, without the consent of the majority by frontage of the owners of the property fronting on the same and without the power to sell, alienate, mortgage, or encumber the same, which board of park commissioners was duly organized under and by virtue of an act of the General Assembly of the State of Illinois entitled "An act to amend the charter of the city of Chicago and to create a board of park commissioners and authorize a tax in the town of West Chicago and for other purposes," approved and in force February 27,
311 1863, and of the acts and parts of acts amendatory thereto; that by the provisions of said act the said board of West Chicago Park Commissioners was given full and exclusive power to govern, manage, and to direct all parks, boulevards, and ways authorized by that act and by them purchased, made, laid out, or established, to lay out, regulate, make, and improve the same, pass ordinances and issue and enforce orders for the regulation and government of the same; to levy special assessments on all property by them deemed benefited by the purchase, opening, and improvement of such parks, boulevards, and ways, as provided and limited by said act, and in general was given by said act power and authority to lay out, establish, and improve parks, boulevards, and pleasureways, as described in said act; that in and by said act above mentioned and by a subsequent act of the General Assembly of the State of Illinois entitled "An act supplemental to an act to amend the charter of the city of Chicago, to create a board of park commissioners, and authorize a tax in the town of West Chicago, and for other purposes, approved February 27, 1869," approved and in force April 19, 1869, it was provided that said West Chicago Park Commissioners should have the power and authority to locate the boulevard, promenade, driveway, and pleasureway in such manner as in said act and supplemental act are more specific-
312 ally described, so as to connect the several parks so authorized by said original and supplemental acts to be located.

That pursuant to the authority conferred upon said West Chicago Park Commissioners by virtue of said original and supplemental acts such commissioners did locate a boulevard or pleasureway in the city of Chicago, Cook county, Illinois, and within the limits defined by said original and supplemental acts between the southeasterly line of Barrypoint road, now known and designated as Colorado avenue, said Barrypoint road or Colorado avenue being the southeastern boundary of Garfield park, and thence running south a distance of 4,250 feet, more or less, and thence east 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, said Douglas park being one of the parks located and established under and by virtue of said original and supplemental acts, and now under the management and control of said commissioners; that said boulevard or pleasureway so located and established by said commissioners connects Garfield park (the same being one of the parks so located pursuant to the provisions of said original and supplemental acts and now under the management and control of said commissioners) with the said Douglas park, and that such con-

nection by said boulevard between said Garfield and Douglas parks is accurately shown and defined upon the route, plan, and
313 design indicated and specifically described in the drawings or maps hereto attached and marked "Exhibit A."

That in the location of said boulevard said commissioners were authorized by said acts above mentioned to locate the same in any part of the town of West Chicago, and in sections 14, 23, and 24, T. 39 N., R. 13 E., of 3d P. M., all of said sections lying and being situate in the town of West Chicago, and within the city of Chicago, as set forth in said original and supplemental acts.

That the jurisdiction of said West Chicago Park Commissioners was by said original and supplemental acts made and now is absolute and undisputed, and it was further provided by said original and supplemental acts that said West Chicago Park Commissioners should have the right and authority to cause property benefited by the location of such boulevard to be specially assessed to pay for the improvement thereof.

And your petitioner further shows that under and by virtue of the provision of the acts of the General Assembly above cited the said West Chicago Park Commissioners did proceed about the year 1869 and 1870 to lay out and acquire the lands necessary for the boulevards hereinabove designated and hereinafter more par-
314 ticularly described by the maps and plan hereto attached and heretofore referred to as "Exhibit A." and did acquire by condemnation, purchase, gift, or otherwise all of the lands included in said boulevard or pleasureway so described, and did enter upon the possession of the same during or about the year 1869 or 1870; that said commissioners did mark out the boundaries of said boulevard, and that said boulevard so acquired by said commissioners was defined as a piece or parcel of land not less than 250 feet in length at any point, nor more than 400 feet in width at any point, as will be shown by maps and plans thereof hereto attached and so marked "Exhibit A."

That said commissioners have remained in possession and control of said boulevard or pleasureway from about the year 1870 hitherto, and that the same has never been improved as a boulevard or pleasureway and promenade, as it was intended that the same should be improved, by the provisions of the said original and supplemental acts and other acts of the General Assembly of the State of Illinois passed and approved subsequent to the said original and supplemental acts, nor according to the authority and power vested in said West Chicago Park Commissioners under an act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public
315 parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873; under and by virtue of which said act last cited the corporate authorities of towns in which any such parks or boulevards are located were authorized to levy a special assessment or special tax on the contiguous property abutting on any such boulevard for the purpose of paying the cost of

improving the same; that said boulevard so proposed to be improved and so connecting Garfield park with Douglas park, is a part and parcel of the original boulevard and system of parks and pleasureways authorized and designated to be established and acquired by the West Chicago Park Commissioners by virtue of said original and supplemental acts, and was intended for the purpose of connecting said Garfield park with said Douglas park, according to the provisions of said original and supplemental acts.

And your petitioner further shows that said West Chicago Park Commissioners are now in control and management of said boulevard so proposed to be improved, and have been in the possession and control thereof for a period of more than twenty years; that all of said boulevard lies and is situated in the town of West Chicago, Cook county, Illinois.

316 And your petitioner further shows that the said West Chicago Park Commissioners, desiring to improve that certain boulevard hereinbefore described as Douglas boulevard or Douglas Park boulevard, so extending south from the southeasterly line of Barrypoint road or Colorado avenue, above mentioned, a distance of 4,240 feet, more or less, and thence due east to the intersection thereof with the west line of Douglas park, a distance of 4,490 feet, more or less, did carefully designate the line of said improvements and did prepare a plan or plans thereof, and did prepare estimates of the cost of such contemplated improvement, together with specifications therefor, and did transmit such plan, specifications, and estimates to the supervisor, assessor, and clerk of the town of West Chicago, in which said boulevard is located, said supervisor, assessor, and clerk being the corporate authorities duly designated by said act of the General Assembly, so approved May 2, 1873, as the corporate authorities of said town to levy a special tax or special assessment for the purpose of paying the cost of said contemplated improvement of said boulevard; that said West Chicago Park Commissioners also obtained the consent and authority in writing, in due form of law, of the owners of a majority of the property or land abutting upon said boulevard so proposed to be improved by

317 the said consent or petition of a majority of such owners of the property or land so abutting upon said boulevard. The said West Chicago Park Commissioners were asked and petitioned to make such improvement according to the plans and specifications and estimate of the cost thereof so transmitted and presented by the said West Chicago Park Commissioners to the supervisor, the assessor, and town clerk, said corporate authorities to carry out the purposes and objects of the said statute hereinbefore referred to as having been approved May 2, 1873.

And your petitioner further represents that said petition was found by said West Chicago Park Commissioners and determined by them to contain the consents and signatures and petition of the owners of a majority of the lots, lands, and property fronting and abutting on said Douglas boulevard or Douglas Park boulevard so proposed to be improved to the making of such improvements and to the making and levying of a special tax or special assessment

upon the property abutting on said boulevard for the purpose of paying the cost of such improvement as proposed.

And your petitioner further represents that the said supervisor, assessor, and clerk, the duly designated and constituted cor-
318 porate authorities of the town of West Chicago, as aforesaid, also found that the owners of a majority of the property, lots, and land fronting and abutting on said boulevard between the south line of Barrypoint road or Colorado avenue, running south a distance of 4,250 feet, more or less, thence east a distance of 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, in said city of Chicago, had in fact consented to the improvement of said boulevard as and for a boulevard and driveway, according to the plans and specifications so transmitted and presented to said corporate authorities of the town of West Chicago, as aforesaid, and to the making and levying of a special assessment or special tax upon the property, lots, and lands contiguous to and abutting upon said boulevard so proposed to be improved, for the purpose of paying the cost of said improvement, the cost and expenses of making, levying, and collecting the same, and that the owners of a majority of the property so fronting or abutting on said boulevard had petitioned and requested said West Chicago Park Commissioners, so being in the control and management of said boulevard, to make said improvement and to cause a special assessment or special tax to be levied on the property abutting on said Boulevard for the purpose of paying the cost thereof,
319 and that the proceedings therefor and in that behalf should be conducted and carried forward in pursuance of the provisions of the act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1, 1873, and in pursuance of any and all other statutes of the State of Illinois in such case made and provided for the purpose of making, completing, and paying for the improvement of said Douglas boulevard according to said plans, specifications, and estimates.

The plan of said improvements so to be made upon said Douglas boulevard hereinbefore referred to as "Exhibit A" follows herewith and is made a part hereof.

The specifications so made by the said West Chicago Park Commissioners and so transmitted and presented to said corporate authorities of said town of West Chicago herewith follow and are marked "Exhibit B" and made a part hereof.

The exhibits that were attached to this petition are found elsewhere in this bill of exceptions and are here omitted by agreement of parties.

320 It was admitted by the parties that objections were filed in the original cause on behalf of all the property here objecting and above described in paragraphs 3 and 4 of said act as above recited, and said objections are omitted here by agreement.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County, to the June Term Thereof, A. D. 1893.

In the Matter of the Petition of the Corporate Authorities of the Town of West Chicago for the Appointment of Commissioners to Make an Assessment to Pay the Cost of the Improvement of Douglas Boulevard from the Southeasterly Line of Garfield Park to the West Line of Douglas Park, in the Town of West Chicago, Cook County, Illinois.

Before Honorable Frank Scales, judge of the county court of Cook county.

Order of Confirmation.

321 And now, on this eighth day of July, A. D. 1893, the same being one of the days of the June term of this court, the matter of the said above-entitled petition coming on to be heard by and before the court upon the sufficiency and validity of said petition and all proceedings thereunder, including the acts of the commissioners heretofore appointed in this cause and of the returns made by them and the sufficiency and validity thereof, in the matter of the assessment-roll by them made and prepared, the oath of office by them taken, the affidavits of mailing and posting notices, and the certificate of publication of notice herein, as well as upon the objections to the said assessment hereinbefore filed in this cause, the corporate authorities of the town of West Chicago, constituted by law as the corporate authorities for such purpose, appearing by Francis A. Riddle, their attorney, and the objectors hereinafter named appearing by their attorneys of record, the said corporate authorities of the town of West Chicago, by their said attorney, moving the court to confirm the said special assessment filed herein with the clerk of this court on the 28th day of April, A. D. 1893, and also moving that the said court should make such order or orders
322 in the premises as should to it seem just and proper and in accordance with the statutes in such cases made and provided, and the introduction of testimony by the petitioner herein upon the hearing of this cause, and upon the hearing of the evidence submitted to the court by the objectors to said special assessment hereinafter named, and after hearing of testimony offered by the objectors hereinafter named, and upon due proof in open court made by the petitioner of the consent in writing and of the sufficiency and validity of the petition of the owners of more than the majority of the lots, blocks, and lands abutting on said Douglas boulevard between the southeasterly line of Garfield park and the west line of Douglas park, and of the consent of the majority of the owners of said blocks, lots, and lands so abutting — aforesaid to the making and levying of the special tax or assessment to pay the cost of said improvement, the court now here finds that all of the allegations in said petition filed by said corporate authorities herein

are true in substance and in fact, and that the West Chicago Park Commissioners are a board of park commissioners now existing in a town which is now included within the limits of the city of Chicago and State of Illinois, being authorized by law to acquire land and the appurtenances in trust for the inhabitants of
323 such town and of the division or part of such city and of such parties or persons as may succeed to the rights of such inhabitants, for the purposes of a public promenade or pleasure grounds or ways, but not for any other use or purpose without the consent of the majority, by frontage, of the owners of the property fronting on the same, and without the power to sell, alienate, mortgage, or encumber the same, which board of park commissioners was duly organized under and by virtue of the provisions of an act entitled "An act to amend the charter of the city of Chicago, to create a board of park commissioners and authorize a tax in the town of West Chicago, and for other purposes," approved and in force February 27th, 1869, and under and by virtue of other acts amendatory thereto, and that said West Chicago Park Commissioners are still a corporation existing under and by virtue of the authority of said acts of the General Assembly of the State of Illinois; that by the provisions of the said acts of the said General Assembly of the State of Illinois the said West Chicago Park Commissioners were given full and exclusive power to govern, manage, and direct all parks, boulevards, and ways authorized by the said acts and by the said West Chicago Park Commissioners purchased, made, laid out, or established, to lay out, regulate,
324 make, and improve the same, to pass ordinances, to issue and enforce orders for the regulation and government of the same, to levy special assessments upon all property by them deemed benefited by the purchase, opening, and improvement of said parks, boulevards, and ways as limited by said acts, and in general were given by said acts power and authority to lay out, establish, and make parks, boulevards, and pleasureways, as described in said acts of the General Assembly; that by subsequent acts of the General Assembly, as described in said petition, the West Chicago Park Commissioners were authorized and given power and authority to locate a boulevard, promenade, driveway, and pleasureway in such manner as in said acts are more specifically described, which acts are referred to in the petition herein, so as to connect said Garfield park (formerly known as Central park) with said Douglas park; that by virtue of said acts of the General Assembly the said West Chicago Park Commissioners were authorized to connect the said boulevard with any part of the town of West Chicago, and in sections 14 and 23, township 39 north, range 13 east, of the third principal meridian, which said sections are a part and parcel of the town of West Chicago, and lie within the park district described in the afore-
325 mentioned acts of the General Assembly of the State of Illinois.

And the court finds that said Douglas boulevard, as above described, is within the control and jurisdiction of the West Chicago

Park Commissioners for purposes of improvement as a public boulevard, driveway, and promenade as provided by law.

And the court further finds that the said West Chicago Park Commissioners, desiring to improve said boulevard, as described in said petition, had due authority of law to make and adopt the estimate and to make the application to the corporate authorities of the town of West Chicago, as set forth in the petition filed herein, in the name of said town, by the supervisor thereof, and that said West Chicago Park Commissioners did in fact and in due form make an estimate of the cost of said improvement so proposed to be made, and did in due form of law make and adopt plans and specifications for said improvement, and did in due form of law transmit and present said estimate, plans, and specifications, together with the application and request of said West Chicago Park Commissioners in that behalf, to the said corporate authorities of the town of West Chicago, to wit, the supervisor, assessor, and clerk of said
326 town, as and in the manner set forth in said petition, and that all of the steps and proceedings taken by said West Chicago Park Commissioners in that behalf, and all of the steps and proceedings taken by the said corporate authorities of said town of West Chicago pursuant to the request of said West Chicago Park Commissioners, were and are in all things regular and binding according to law, and the same are hereby approved, ratified, and confirmed by this court for the purposes aforesaid.

And the court further finds that pursuant to the petition filed by the corporate authorities of the town of West Chicago three duly qualified persons were appointed by this court to make and levy a special tax or assessment upon the property abutting on said boulevard so proposed to be improved; that said commissioners took in due form the oath of office required by law to be taken by such commissioners; that after taking such oath said commissioners proceeded to go upon and examine the lots and locality where said improvement is proposed to be made, and the lots, blocks, tracts, and parcels of land that would be specially benefitted thereby, and that such commissioners found that the property contiguous to and abutting upon the boulevard so proposed to be made would be benefitted to the extent of the cost of said improvement as estimated by said West Chicago Park Commissioners, and that
327 such commissioners did apportion and assess the amount so found to be of benefit to the property abutting on said boulevard upon the several lots, blocks, tracts, and parcels of land abutting thereon in proportion as in their judgment they would be severally benefitted by said improvement.

And the court finds that no lot, block, tract, or parcel of land has been assessed a greater amount than it will be actually benefited, except as hereinafter provided.

And the court further finds that the said commissioners made or caused to be made an assessment-roll in which there appears the names of the owners, so far as by them known, and the description of each lot, block, tract, or parcel of land, the amount assessed as special benefits thereto as found by said commissioners set down

opposite the description of said lots, blocks, tracts, or parcels of land, and that said assessment-roll, when so completed by said commissioners, was returned to and filed in this court by said commissioners on the 28th day of April, A. D. 1893, which day and date was at least ten days before the first day of the May term of this court.

And the court further finds that the said commissioners so appointed by this court did, as provided by law, send by mail to each owner of the premises so assessed whose name and place of
328 residence was known to the said commissioners a notice, as required by law, of the said assessment, and that an affidavit of the sending of said notice by mail has been filed by the said commissioners in this cause, as required by law, and that a copy of said notice was attached to the said affidavit, as required by the statute in such cases made and provided, and also that a notice of the said assessment was given by the said commissioners by posting a copy of such notice in at least four public places in the city of Chicago, two of which were in the neighborhood of said proposed improvement, as is shown by the affidavit of said commissioners filed herein, which posting of said four notices by the said commissioners was done on the 28th day of April, A. D. 1893, and that the said commissioners further gave notice, as required by law, of the said assessment by publication of said notice for ten successive days in the Chicago Mail, said Chicago Mail being a daily newspaper published in the city of Chicago and of general circulation throughout Cook county and the State of Illinois, and that the date of the first paper containing such notice was the 28th day of April, A. D. 1893, and the date of the last paper containing such notice was the 9th day of May, A. D. 1893, and that a certificate in due form of
329 law of the publication of said notice was filed in this court in this proceeding on the 9th day of May, A. D. 1893; and the court here and now approves and confirms all of said notices and the publication thereof as above set forth, and finds the same in all respects to have been given and published in the manner and form as required by law.

And the court further finds that by virtue of the notices so given and published as hereinabove recited and found all persons interested in the lots, pieces, and parcels of land specially taxed for the cost of said improvement of said boulevard, and that all persons owning lots, blocks, pieces, or parcels of real estate abutting on said boulevard so to be improved, had due notice, according to the statutes of the State of Illinois in such cases made and provided, that the matter of said special tax or special assessment for the purpose of paying the cost of improving said boulevard would be heard and would come on for hearing on the first day of May term of this court, which term commenced on the second Monday, being the 8th day, of May, A. D. 1893; that on the 10th day of May, 1893, the same being one of the days of the term of this court, an order was entered by this court requiring all persons interested in the matter of said special tax or special assessment to make objections thereto *on* or before ten
330 o'clock in the forenoon of the 12th day of May, 1893, and that said assessment should be in all things approved

and confirmed as to all persons interested therein who did not appear and object to the same according to law *on* or before 10 o'clock of said 12th day of May, 1893, and that on said 12th day of May, 1893, said assessment in all things was by the order of this court duly confirmed and approved, except as to the lots, blocks, pieces, and parcels of land hereinafter particularly mentioned, to which lots, being the lots hereinafter mentioned, objections had been duly filed by parties interested therein in this court on or before said 12th day of May, 1893, and as to the lots, blocks, pieces, and parcels of land so hereinafter mentioned and the persons interested therein the hearing and determination of said objections was continued from time to time by order of this court until the present day, upon which a final hearing as to the whole matter of the said assessment, and particularly as to the objections made by the owners or persons interested in the lots, blocks, pieces, or parcels of land hereinafter mentioned, comes before the court for final hearing and disposition.

And the court, having full jurisdiction, as aforesaid, in the premises and of the subject-matter and of all of the parties interested in said assessment, further finds that Philip M. Prescott, as the
331 owner of lots 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23, in subblock 2, in block 1, and of lots 14, 15, 16, 17, 18, 19, 20, 21, of block 2, and lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, in subblock 2; 22 and 23, in subblock 2 of block 5 of Prescott's Douglas Park addition to Chicago, said addition being a subdivision of blocks 1, 2, 5, and 10, in the circuit court partition of the east ½ of the northeast ¼ and that part of the east ½ of the southeast ¼ (being north of the center line of Ogden avenue) of section 23, township 39 north, range 13 east, of the third principal meridian, has filed objections to the confirmation of said special tax or special assessment as against all of the lots herein last above described; and the court, being fully advised in the premises and after the introduction of evidence before the court on the part of said corporate authorities of the town of West Chicago, and also in behalf of said Philip M. Prescott, objector as aforesaid, and after argument of counsel for the respective parties, overrules said objections in all things except as to the total amount of benefits to be specially taxed or levied upon said several lots so as hereinabove last described.

The court therefore finds, by consent of the said Philip M. Prescott, in open court, that said lot 14, in said subblock 2, in block 1 aforesaid, is specially benefited to the extent of $345.95, and by
332 the consent and agreement of the said Philip M. Prescott the said lot 14, in said subblock 2 of said block 1, is hereby specially taxed in the sum of $345.95 for benefits thereto for the purpose of paying the cost of said improvement, and the said sum of $345.95 is hereby declared and made a specific lien upon said lot 14, in said subblock 2 of said block 1, for the purposes aforesaid.

And the court further finds that said lot 14, in sub-block 2, in block 2, is benefitted by reason of said proposed improvement to the extent of $345.95.

And the court therefore and by consent of the said Philip M.

Prescott, in open court, hereby specially orders that said lot 14 of sub-block 2, in block 2, be specially taxed the said sum of $345.95 for benefits accruing to said lot 14 by reason of said improvement.

As to lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, in sub-block 2 of block 5, in said Prescott's Douglas Park addition to Chicago, the court finds that said lot 1 of sub-block 2 of block 5, aforesaid, is benefited to the extent of $345.95, and that each of lots 2 to 10, inclusive, in said sub-block 2 of block 5, aforesaid, are specially benefited to the extent of $212.50 each as the special benefits resulting to each of said lots 2 and 10, inclusive, as aforesaid, by reason of said pro-
333 posed improvement.

And the court therefore orders that said lot 1, sub-block 2 of block 5, be, and the same is hereby, specially taxed the said sum of $345.95 as special benefits resulting thereto by reason of said proposed improvement, and that said lots 2, 3, 4, 5, 6, 7, 8, 9, and 10, in said sub-block 2 of block 5, so objected for by the said Philip M. Prescott, be each severally specially taxed the sum of $212.50 as the amount of benefits resulting to each of said lots 2 to 10, inclusive, by reason of said improvement, and that the respective and several amounts so specially taxed against each of said several lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 be, and the same is hereby, made a specific lien upon each of said lots last above mentioned for the amounts so severally taxed against each of the same, and that said amounts so specially taxed shall be enforced and collected against said lots 1 to 10, inclusive, in said sub-block 2, respectively, in the manner provided by law.

And the court, having full jurisdiction, as aforesaid, in the premises and of the subject-matter and of all the parties interested in said assessment, further finds:

That Lambert Tree and Anna J. Tree have filed objections to the confirmation of said special tax as to that portion of the west half of the northwest quarter of section 14, township 39 north, range 13 east, of the third principal meridian, lying southeasterly of Colorado avenue.

And the court being fully advised in the premises, and after hearing evidence on behalf of said petitioner, the corporate
334 authorities of the town of West Chicago, and also on behalf of said objectors, and after argument by counsel for the respective parties, the court here and now overrules the objections so filed by the said Lambert Tree and Anna J. Tree in all things, except as to the total amount of benefits specially taxed and levied against the said real estate last described.

And the court further finds, by and with the consent of the said Lambert Tree and Anna J. Tree, in open court, that said parcel of land so objected for by the said Lambert Tree and Anna J. Tree, as aforesaid, is justly benefited in the sum of $1,912.50, and by and with the consent and agreement of the said Lambert Tree and Anna J. Tree, as aforesaid.

The court now especially taxes and levies upon that portion of the west half of the northwest quarter of section 14, township 39

north, range 13 east, of the third principal meridian, lying southeasterly of Colorado avenue, the sum of $1,912.50.

And the court orders that said sum of $1,912.50 be, and the same is hereby, made a specific, valid, and binding special tax against the property last above described, and here orders that the special tax of $1,912.50 so levied against said real estate be and remain a just, valid, and legal special tax against said real estate so objected for by the said Lambert Tree and Anna J. Tree, to be enforced and collected against said parcel of land in the manner provided by law.

335 And the court being fully advised in the premises and having full jurisdiction of the subject-matter of the said assessment and of all of the parties interested therein, further finds:

That Josiah L. Lombard is the owner of the west 383½ feet (except the west 33 feet thereof, and also except the east 66 feet of the west 365 feet thereof) of lot or block 1 of Douglas Park addition, in section 24, township 39 north, range 13 east, of the third principal meridian; that said west 300 feet of said lot or block 1 is contiguous to and abutting upon said Douglas boulevard so proposed to be improved.

And the court further finds that the said Josiah L. Lombard, by consent in open court, has agreed that said west 300 feet of said lot or block 1, in said Douglas Park addition to Chicago, should be included in the assessment-roll made and filed by the commissioners heretofore appointed by this court in this cause, and that said west 300 feet of said lot or block 1, so owned by said Josiah L. Lombard, is specially benefited to the extent of $1,000 by reason of the proposed improvement of said boulevard.

And the court therefore, upon the consent in open court of the said Josiah L. Lombard, orders and directs that the said west 300 feet of said lot or block 1, in said Douglas Park addition, so owned by said Josiah L Lombard, be specially taxed the sum of $1,000

336 for benefits accruing to said parcel of land by reason of said proposed improvement of said boulevard.

And the court further orders that said sum of $1,000, so specially taxed and levied by and with the consent of the said Josiah L. Lombard against said parcel of real estate last above described for benefits resulting thereto by reason of said improvement, be, and the same is hereby, confirmed as a just, valid, and binding special tax against said parcel of land for the use and purposes aforesaid; which said sum of $1,000 is to be enforced and collected against said parcel of real estate so owned by the said Josiah L. Lombard in the manner provided by law.

And the court, having full jurisdiction in the premises and of the subject-matter and of all of the parties interested in the matter of said special assessment or special tax as to the objections filed by J. J. Kane and J. T. Sullivan as the executors and trustees under the will of Michael Reilly, deceased, finds that said objections should be, and the same are hereby, overruled in all things except as to the amount of special benefits resulting to lots 31 to 48, both inclusive, described in the objections last named as being in block 5, in D. Goodwin's subdivision of the northwest quarter of the northeast

quarter of section 23, township 39 north, range 13 east, of the third principal meridian, and as to the amount of special benefits resulting to said lots, from 31 to 48, both inclusive, the court finds that said lots 31 to 48, both inclusive, are specially benefited to the extent of $141.67 each, and by agreement of the parties interested in said lots 31 to 48 above described the court therefore orders that each of said lots, from 31 to 48, both inclusive, be separately specially taxed, as and for the benefits resulting to each of said several lots by reason of said proposed improvement of said boulevard, the sum of $141.67, and that the said sum of $141.67, so specially taxed and levied against each of said lots, from 31 to 48, both inclusive, be, and the same is hereby, confirmed in all things, and that the sum of $141.67 shall be and is a valid and binding special tax against each of said lots respectively, to be enforced and collected in the manner provided by law.

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And the court, being fully advised in the premises and after hearing all of the evidence offered and produced before the court, as well on the part of the said corporate authorities of the town of West Chicago as on the part of said objectors, hereby orders that the assessment-roll herein filed, after having been corrected and amended as above ordered and directed as to the separate lots, pieces, and parcels of real estate above mentioned in the objections filed by the several owners thereof, shall be in all things fully confirmed and approved, and that the amounts above mentioned as the proper sums to be specially taxed against the several lots, blocks, pieces, and parcels of land described in the objections of said objectors are to remain as the amounts to be specially taxed against said several lots, blocks, pieces, and parcels of real estate described in the several objections filed in this court in this cause, and the special tax against the several lots, blocks, pieces, and parcels of real estate so found by this court in respect to said several objections of said several objectors shall be, and the same is hereby, confirmed in all things the same as to all other lots, blocks, pieces, and parcels of land mentioned and described in said assessment-roll, and the several sums so specially levied and taxed by said commissioners, as modified by the orders of this court, shall be a just, valid, and binding lien upon the several lots, blocks, pieces, and parcels of land so specially taxed as provided by law until the same shall have been paid in the manner herein and by law provided.

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And the court further finds that the said special tax so ordered to be corrected by the court has in fact been made by the said commissioners in proportion, as near as might be, to the benefits resulting to the lots, blocks, pieces, and parcels of real estate so specially taxed for the purpose of paying the cost of said proposed improvement of said boulevard, and that each separate lot, block, piece, and parcel of land contained and described in said assessment-roll as abutting upon said Douglas boulevard has been in fact so specially taxed its just share of the cost of said improvement.

And the court further finds that the total sum of benefits so specially taxed upon each separate lot, block, and parcel of real estate so abutting upon said Douglas boulevard does not exceed the

amount of special benefits so specially taxed to each of the
339 said several lots, blocks, pieces, and parcels of land contained in said assessment-roll, and that all of the proceedings herein are regular and in strict conformity to law.

And the court, being fully advised in the premises, further and hereby orders that the said assessment-roll herein filed as changed, modified, and corrected, as hereinabove set forth, shall be, and the same is hereby, full- and completely confirmed in all things, and that the said special tax shall be a lien upon the several lots, blocks, pieces, and parcels of land in said assessment-roll described, to be enforced and collected according to the provisions of the statute of the State of Illinois in such cases made and provided.

And the court further finds that in and by the ordinances of the corporate authorities of the town of West Chicago authorizing and directing said special tax it was provided that the said special tax should be collected by instalments, the first of which instalments should be 20% of the amount of the special tax so made upon each lot, block, piece, and parcel of land so specially taxed, as shown by said assessment-roll.

The court therefore orders that said special tax shall be divided and payable by instalments, the first of which installments shall be 20% of the total amount of said special tax, and that the remaining portion of said special tax, after deducting said first instalment, shall be divided into four equal annual instalments, which instal-
ments shall be payable annually thereafter and collected in
340 the same manner that other assessments are now collected; that each of said last-mentioned four instalments shall bear interest at the rate of 6% per annum from the time and in the manner provided by law, and that the first above-mentioned instalment shall be due and payable from and after this date, and the commissioners and the clerks of this court are hereby ordered and directed to complete upon the assessment-roll and book returned herein to this court said special tax as hereinabove modified and corrected against the several lots, blocks, pieces, and parcels of land concerning which objections were filed and disposed of herein, and to designate in proper columns, opposite the description of the several lots, blocks, pieces, and parcels of land contained in said assessment-roll, the amount of each of said instalments as herein provided for, and to carry out and set opposite the description of each lot, block, tract, and parcel of land, so assessed, the amount of said several assessments payable as above provided.

And the court, being fully advised in the premises and having full jurisdiction of the subject matter thereof and of all of the parties interested therein, finds that William D. Rawlins, Daniel J. McMahon, and Humphrey Moynihan, the commissioners appointed by this court to make and levy said special tax, are entitled to be paid for their services in that behalf, out of the funds so specially levied, when collected, the sum of $600 each.

And the court therefore orders that the said William D. Rawlins,
Daniel McMahon, and Humphrey Moynihan, as such com-
341 missioners, be paid, out of the funds realized from said special

tax, when collected, the sum of $600 each, in full payment for their services as such commissioners in that behalf.

And it appearing to the court that the West Chicago Park Commissioners, being the corporate authorities authorized by law to receive and collect said special tax, have in due course of business, by ballot, nominated and selected George F. Talty to be the special collector to collect said special tax in the manner and form provided by law—

It is therefore ordered by this court that said George F. Talty be, and he is hereby appointed and confirmed by this court as the special collector to take charge of the collection of the special tax herein made and confirmed, to collect and pay over the same to said West Chicago Park Commissioners, full power and authority being given him to make any and all such collections, and to give proper receipts and acquittances therefor, and to make return of all delinquent instalments upon any or all of the lots, blocks, pieces, and parcels of land contained in said assessment-roll upon which any or all of said installments shall be and remain unpaid after the same has become due and payable in the manner and form provided by law and as directed by said West Chicago Park Commissioners.

And the court further orders that the said George F. Talty be required to give a good and sufficient bond, conditioned for the faithful performance of his duties as such special collector
342–418 and the proper paying over and accounting for all moneys coming into his hands as such special collector, and that the penalty of such bonds and the sufficiency and qualifications of the sureties thereon shall be fixed and determined by the West Chicago Park Commissioners.

419 * * * * * * *

Which was all the evidence offered or received at the hear-
420 ing of the motions and legal objections in the above-entitled cause.

Thereupon the said objectors upon the said evidence requested the court to pass upon their motion to strike out of the said assessment-roll all the amount included therein in excess of the actual cost of the said work, claiming to have shown by the testimony of the said witness, George W. Dorr, what the original cost of the said work actually was; which motion the court denied; to which action of the court the said objectors then and there, by their counsel, duly excepted.

Thereupon the said objectors moved the court to dismiss the said cause on the ground that the ordinance for the original assesssment, upon which the present proceeding was based, is void; which motion was denied; to which action of the court in denying the said motion the said objectors then and there duly excepted.

Thereupon the objectors moved the court to strike out of the said assessment-roll all the amount assessed against any of the property of said objectors in excess of the amount charged against the said property respectively by the original order of confirmation entered

at the June term, A. D. 1893; which motion was denied; to which action of the court in denying the said motion the said objectors, by their counsel, then and there duly excepted.

Thereupon the objectors moved the court to recast the said roll so as to charge upon the property assessed herein and included in said objections, lying upon the east side of the said portion of the boulevard extending from north to south, and upon the south side of the portion of the boulevard extending from east to west, a larger
421 proportion of the total cost of the said improvement than upon the other side, claiming to have proven by the evidence aforesaid that the property abutting on said boulevard on the east and south sides was benefitted in a larger proportion than the property on the other sides thereof; which motion the court denied; to which action of the court in denying the said motion the objectors for the property affected thereby then and there, by their counsel, duly excepted.

The said objector, Lombard, thereupon moved the court to strike out of said assessment-roll the charge against his property described in his objections in excess of $1,000; which motion was denied; to which action of the court the said objector, Lombard, then and there duly excepted.

And thereupon the said Lombard moved the court to strike out of said assessment-roll the whole amount charged against his said property in excess of $3,000; which said motion the court denied; to which action of the court the said Lombard then and there duly excepted.

And thereupon all the said motions and legal objections having been disposed of, the said cause came on to be tried upon the objections triable by jury; and thereupon it was stipulated in open court by the petitioners and by said objectors that the said [illegible] should be submitted to the court for trial without a jury upon the said issues and upon the same evidence in all respects which has been offered upon the said motions and legal objections as hereinbefore set forth, without recalling witnesses or introducing or recalling or offering the said testimony, the same to be treated as having been offered upon the said issues.

Which was all the evidence offered on the said hearing.

422 And thereupon the objectors contended that it was shown by the said evidence that the property of the objectors and of each of them, severally, was assessed more than its proportionate share of the cost of the said improvement; but said objections were overruled, and the court found the issues for the petitioners; to which action of the court the said objectors then and there duly excepted.

And thereupon the said objectors moved the court for a new trial of said cause, and filed their motion in writing; which said motion is as follows:

"Now come the objectors, represented by Wilson, Moore & McIlvaine, and move the court for a new trial of the said cause and to set aside his findings therein for the following reasons:

1st. For each of the reasons stated in the several motions and objections heretofore filed by the said objectors.

2nd. For that the said finding is not in accordance with the evidence.

3rd. For that the said finding is not according to law.

4th. For that the said finding is not authorized by the proceedings in the cause.

5th. For that the court admitted improper evidence offered by the petitioner and refused to strike the same out of the record.

6th. For other reasons."

Which said motion was denied; to which action of the court the said objectors then and there duly excepted.

And thereupon the said objectors moved the court in arrest of judgment upon all the grounds stated in their objections
423 to confirmation on file and in the said motion for new trial, and upon the grounds stated in the said motions to dismiss, to recast, and to strike out, as above set forth; which motion the court denied; to which action of the court the objectors then and there duly excepted.

And thereupon the court, on June 10th, A. D. 1898, entered its order of confirmation, which order is the same as that contained in the transcript of record of this cause, and is omitted in this place by agreement of parties; to the entry of which said judgment the objectors then and there duly excepted.

Thereupon the objectors prayed an appeal from the said judgment to the supreme court of Illinois, which appeal was granted upon the filing of a joint appeal bond in the penal sum of five hundred dollars ($500), as many of said objectors as should not elect to join in said bond being allowed to file their several bonds in the respective sums of two hundred and fifty dollars ($250) each, all bonds and security to be approved by the clerk of the court, said bonds and bill of exceptions to be filed within forty (40) days from the entry of the said judgment; and because the said motion and things do not fully appear of record in said cause the said objectors have prepared and tendered this their bill of exceptions, and pray that the same may be signed and sealed by the court; which is accordingly done this 14th day of July, A. D. 1898.

WILLIAM T. HODSON, [SEAL.]
Presiding Judge of the said Court.

O K.
H. S. MECARTNEY, *For Petitioner.*

424 STATE OF ILLINOIS, }
County of Cook, } ss:

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true, correct, and complete transcript of the record in the matter of the application of the West Park Commissioners for confirmation of the assessment for improving Douglas Park boulevard against the property of Josiah Lombard *et al.*,

represented by Wilson, Moore & McIlvaine, and described in the objection filed herein (except bill of exceptions, the original bill of exceptions being by stipulation incorporated herein and made part of this transcript of the record)—gen. No., 15232—all of which appears from the record and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chi-
[SEAL.] cago, in said county, this 22nd day of September, A. D. 1898.

PHILIP KNOPF,
Clerk of the County Court.

Clerk's costs, transcript, $7.20.
Paid.

PHILIP KNOPF, *Clerk.*

425 In the Supreme Court of Illinois.

E. A. CUMMINGS ET AL., Appellants,
vs.
WEST CHICAGO PARK COMMISSIONERS, Appellees.
} Appeal from the County Court of Cook County.

Assignment of Errors.

Now come E. A. Cummings, Lambert Tree, Anna J. Tree, Josiah L. Lombard, W. H. Doble, J. N. Vance, Francis J. Dougherty, Michael Reilly, Jr., George V. Reilly, Helen M. Jamison, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael Reilly, Thomas W. Reilly, and Matilda C. Reilly, appellants herein, by Wilson, Moore & McIlvaine, their attorneys, and say that in the record and proceedings and in rendering the judgment herein there is manifest error in this, to wit:

1. The court erred in overruling each of the objections of said objectors to the confirmation of said assessment upon the property owned by said objectors.

2. The court erred in holding that the preliminary requirements of the statute had been complied with by petitioners, and particularly that a petition of abutting owners need not be shown,
426 and also that the ordinance of March, 1893, need not be recited in the petition.

3. The court erred in overruling the objection that the assessment upon the property of objectors exceeds the proportionate share of the cost of the improvement equitably and fairly chargeable upon said property.

4. The court erred in ruling that said assessment and proceeding

to confirm the same *is* not in violation of the 14th amendment to the Constitution of the United States.

5. The court erred in overruling the objection that there was no valid ordinance in existence authorizing said assessment and improvement at the time said improvement was actually completed, and that therefore said improvement and assessment were not authorized by any statute of the State of Illinois, and an imposition of a charge for said improvement would be without process of law and in violation of the 14th amendment to the Constitution of the United States.

6. The court erred in overruling the objection that as the present proceeding and assessment are based on a statute passed in 1895, after the improvement was actually completed, said proceeding and assessment are void as being in contravention of the 14th amendment to the Constitution of the United States.

7. The court erred in overruling the objection that the statute of 1895, upon which this proce-ding and assessment are based, is in contravention of section 1 of the 14th amendment to the Constitution of the United States.

8. The court erred in denying the motion of said objectors to cancel and annul said assessment.

427 10. The court erred in refusing to strike out of the assessment-roll the amount included therein in excess of the actual cost of the improvement.

11. The court erred in refusing to strike out of the assessment-roll the amount assessed against the property of objectors in excess of the amount charged against said property by the original order of confirmation entered at the June term, 1893.

12. The court erred in refusing the motion of objectors to recast the assessment-roll so as to distribute the cost of the improvement in accordance with the benefits accruing therefrom.

13. The court erred in refusing to strike out from the roll, on the motion of objector Lombard, the amount assessed against his property in excess of $1,000.

14. The court erred in refusing to strike from said roll, on the motion of objector Lombard, the amount charged against his property in excess of $3,000.

15. The court erred in admitting improper evidence on behalf of petitioner, and in refusing to strike the same from the record.

16. The judgment of the court was contrary to the evidence.

17. The judgment of the court was contrary to law.

18. The court erred in denying appellants' motion for a new trial.

19. The court erred in confirming said assessment against the property of appellants and each of them.

20. The court erred in denying appellants' motion in arrest of judgment.

428 All of which appellants are ready to verify. Wherefore they and each of them pray that said judgment may be reversed, set aside, and for naught held.

E. A. CUMMINGS,	HELEN M. JAMISON,
LAMBERT TREE,	AGNES G. REILLY,
ANNA J. TREE,	CHARLES J. REILLY,
JOSIAH L. LOMBARD,	JOSEPHINE T. REILLY,
W. H. DOBLE,	MARY C. REILLY,
J. N. VANCE,	HELEN C. REILLY,
FRANCIS J. DOUGHERTY,	MICHAEL A. REILLY,
MICHAEL REILLY, JR.,	THOMAS W. REILLY,
GEORGE V. REILLY,	MATILDA C. REILLY,

By WILSON, MOORE & McILVAINE,
Attorneys for Appellants.

429 And afterwards, to wit, on the 21st day of October, A. D. 1898, certain proceedings were had and orders made and entered of record as follows:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— ——, appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee, —— ——, having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

430 At a supreme court begun and held at Springfield on Tuesday, the 6th day of December, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 21st day of December, A. D. 1898, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. —. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the county court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed,
and that this cause be remanded to the county court of Cook
431 county for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the court that the said appellants recover of and from the said appellees their costs by them in this behalf expended in due course of law.

432 At a supreme court begun and held at Springfield on Tuesday, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 7th day of February, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. —. Appeal from County Court, Cook.

And now, on this day, comes the said appellants and moves the court to strike from the files the petition for rehearing filed herein by the appellees.

433 Be it remembered, to wit, on the 9th day of February, A. D. 1899, the same being one of the days of the term of court

aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } No.—. Appeal from County Court, Cook.

Now, on this day, this cause coming on to be heard upon the petition of the appellee for a rehearing herein, and the court being now duly advised in the premises, it is considered and ordered by the court that said petition for a rehearing be allowed.

434 And afterwards, to wit, on the 22nd day of February, A. D. 1899, certain proceedings were had and orders entered as follows, to wit:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

And now, on this day, comes Mary Prescott and moves the court for leave to file briefs; which motion is by the court granted.

435 EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that a rehearing has been allowed herein, and appellee hath filed herein briefs and arguments of counsel in support of the petition herein and entered motion to affirm the judgment and for costs, and the said appellant- having entered motion to reverse said judgment and for costs, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

436 At a supreme court begun and held at Springfield on Tuesday, the 3rd day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the 13th day of October, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

EDMUND A. CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS.	No. —.	Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligent-y examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error:

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said ap-
437 pellee recover of and from the said appellants its costs by it in this behalf expended, and that it have execution therefor.

438 At a supreme court begun and held at Springfield on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the 13th day of October, 1899, the opinion of the court was filed in the words and figures following, to wit:

E. A. CUMMINGS ET AL. vs. WEST CHICAGO PARK COMMISSIONERS. } No. —. Error to —. Appeal from County Court, Cook.

439 Docket No. R. H. 13. Agenda 76, northern div., Feb., '99.

E. A. CUMMINGS ET AL. v. WEST CHICAGO PARK COM'RS.

Mr. Justice BOGGS delivered the opinion of the court:

This is an appeal from a judgment confirming a special assessment for the improvement of Douglas boulevard, extending from Garfield park south and east to Douglas park. A former proceeding to levy an assessment was before us under the titles of Culver *v.* People, 161 Ill., 89; Farrell *v.* Town of West Chicago, 162 *id.*, 280; Connor *v.* Town of West Chicago, 162 *id.*, 287, and White *v.* Town of West Chicago, 164 *id.*, 196. By the decisions in those cases the proceedings were set aside and the judgment of confirmation reversed. The present petition was then filed, based upon a new ordinance, and this was brought before us in West Chicago Park Com'rs *v.* Farber, 171 Ill., 146. Since the reversal of the judgment in that case there has been a hearing, at which the assessment-roll was confirmed.

At the last hearing appellants moved to dismiss the petition on the ground that the original ordinance was declared void in Culver *v.* People, *supra*, and therefore said ordinance did not provide for any special assessment which could ever become a charge upon private property, and this attempted assessment is contrary to law and in conflict with the fourteenth amendment to the Constitution of the United States. This question was decided adversely to this claim in West Chicago Park Com'rs *v.* Farber, *supra*, but it is insisted that the decision in that case was wrong. The constitution and the statutes provide for making local improvements by special assessment, and we have uniformly held that they confer no authority to make a local improvement upon some other plan, or without any provision for a special assessment, and afterward provide for payment by such assessment. The improvement is to be made by special assessment, and consequently there must be a provision for its payment by that method when it is made.

440 The liability to a special assessment must be created by the ordinance which provides for making the improvement, and such a liability is created by a provision of the ordinance that the cost of the improvement shall be paid by special assessment. The original ordinance, which was passed upon in Culver *v.* People, *supra*, provided that the improvement should be made, "and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon contiguous property abutting on said boulevard." This was a provision that the improvement should be made by special assessment, and was sufficient upon that subject. The ordinance, however, went further, and there was an attempt to create a partic-

ular assessment unknown to the law governing the park commissioners. In that attempt section 2 of the ordinance ordained as follows: "That said special assessment shall be divided into installments; that the first shall be twenty per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of six per cent. per annum." A petition was filed in the county court for the appointment of commissioners to spread an assessment, to be divided into installments, the first twenty per cent. payable on confirmation of the assessment, and the remainder in four installments, payable annually thereafter. There was no authority of law for the particular assessment provided for in the ordinance or the making or confirmation of an assessment of that character, and there was no power or jurisdiction in the court to entertain such a petition and grant the prayer thereof or render the judgment prayed for. The right to levy special assessments is derived solely from statutes, and a special statutory jurisdiction is conferred upon the county court by the statute providing for an assessment. The court may obtain jurisdiction of the subject-matter of a special assessment by the filing of a petition under some existing law calling upon the court to act. If a petition based on any existing statute were presented, the court would acquire jurisdiction over the subject; and if such jurisdiction once attached, no matter how erroneous the judgment might be, it would be binding unless reversed in a direct proceeding. In this case the
441 particular assessment provided for was without authority of law, and the ordinance was void as to such provision. The petition called upon the court to act under the void provision forbidden by the law, and the court could not under it enter any judgment for a different assessment. The court was merely asked to do something which it had no power to do in a matter not pertaining to its general jurisdiction, where jurisdiction must be derived from statute. We therefore held that the ordinance and petition did not confer jurisdiction. There remained, however, in the original ordinance the valid provision that the cost of the improvement should be paid by special assessment, and we adhere to our conclusion in West Chicago Park Com'rs *v.* Farber, *supra*, that it was a sufficient basis for the subsequent ordinance and proceeding to enforce the liability. We think the court was right in overruling the motion, based on the proposition that the original ordinance did not provide for any special assessment.

The statute under which this assessment was made contains a proviso as follows: "Provided, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer" (Hurd's Stat. 1895, p. 1088, sec. 3). The petition recites that the petitioner was requested and authorized to make the improvement by a petition in writing of the owners of a majority of the land fronting on said improvement, as required by said act. At the close of the testimony on behalf of the appellee commissioners appellants moved to dismiss the proceeding on several grounds, one of which (No. 5) was as follows:

"That no petition of the property-owners is proven, as required by the statute of 1873."

The ordinance adopted by the corporate authorities of the town of West Chicago providing for the improvement in question was received in evidence. It recited that the park commissioners had control of the boulevard to be improved and desired to improve the same and had so notified the said corporate authorities of such
town and had presented to such corporate authorities plans,
442 specifications, and estimates of the cost of the improvement, and recited further as follows: "Whereas the commissioners have submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said improvement, duly verified by their engineer; and whereas the corporate authorities of the town of West Chicago have found that said petition contains the signatures of the owners of a majority of the land fronting on said Douglas boulevard: Now, therefore, be it ordained," etc.

Exclusive jurisdiction and power to adopt ordinances providing for such improvements was conferred by law upon the said corporate authorities. The park commissioners were not, as they have been by later statutes, invested with power to adopt an ordinance, but were required to apply to the corporate authorities of the town for an ordinance under which the improvements might be made. The effect of the proviso hereinbefore quoted was to prohibit such corporate authorities from passing the ordinance in question unless petitioned to do so by the owners of a majority of the land fronting on the proposed improvement. Such a petition was a prerequisite to the power of the corporate authorities to enact the ordinance. It was, therefore, of necessity the official duty of such corporate authorities to ascertain, before assuming to act on the question of the adoption of the ordinance, whether a petition which fulfilled the requirements of the statute was before them. It appears from the recitation of the ordinance, a petition purporting to be that which the law demanded was laid before the corporate authorities, and that that body entered upon an official investigation in order to ascertain whether the petition met the requirements of the law, and the ordinance sets forth the result of such official action taken by such authorities. The ordinance recites that said corporate authorities, upon such official investigation, found the petition contained the signatures of the owners of a majority of the land fronting on said Douglas boulevard so proposed to be improved. This recitation we think properly receivable
in evidence as *prima facie* proof of the facts recited. The
443 corporate authorities of the town were, by the statute, invested with sole power in the premises, and were erected by the statute into an official body charged with the duty of acting impartially, in their official capacity, as between the park commissioners and the owners of private property which would be subject to the burden of special assessments in the event the improvement, as proposed by the park commissioners, should be carried into completion. The official duty first devolving upon the corporate authorities was to ascertain whether the owners of

a majority of the land fronting on the proposed improvement had petitioned for the improvement. They discharged that duty. The clerk of the town was, by said section 3 of the act, expressly authorized and required to keep a record of the proceedings of said corporate authorities, and record the ordinances adopted by them, to the same extent the clerk of a city or village is required and authorized to keep the records of the official acts of the city council or village board in the proceedings for making improvements to be paid for by special assessments.

On the subject of the admissibility of public writings in evidence, Mr. Greenleaf, in his work on Evidence (vol. 1, secs. 483, 493), says: "The next class of public writings to be considered consists of official registers, or books kept by persons in public office, in which they are required, whether by statute or by the nature of their office, to write down particular transactions occurring in the course of their public duties and under their personal observation. These documents, as well as all others of a public nature, are generally admissible in evidence, notwithstanding their authenticity is not confirmed by those usual and ordinary tests of truth, the obligations of an oath and the power of cross-examining the persons on whose authority the truth of the documents depends. * * *

444 In regard to these official registers, we have already stated the principles on which these books are entitled to credit, to which it is only necessary to add that where the books possess all the requisites there mentioned they are admissible as competent evidence of the facts they contain." The rule is referred to by Mr. Welty, in his work on Assessments (sec. 280), as follows: "When a petition is presented and a committee reports that it is signed by owners of a majority of frontage, and the report adopted and a proper record made of the proceedings, a *prima facie* case will be made of jurisdiction, and in all subsequent proceedings it will be presumed that the board acquired jurisdiction."

In Wells *v.* Hicks, 27 Ill., 343, we held the recitals in the record of the proceedings of the board of highway commissioners were competent to be received in evidence to show that certain notices, necessary to the jurisdiction of the commissioners, had been posted as the law required. In Shinkle *v.* McGill, 58 Ill., 422, we said: "It is made the duty of the commissioners, before determining to lay out any new road or to alter or discontinue any old one, to fix upon a time and place to hear any reasons which may be offered for or against the establishment or discontinuance of such road. Three notices of the time and place must be posted in three of the most public places in the town at least eight days previous to the time of meeting. There is no evidence of such notice in this record, except the recital in the final order establishing the road. The posting of these notices is a positive requirement of the statute and must be complied with. The question is, What is sufficient evidence of compliance?

445 The final order, signed by the commissioners and deposited with the town clerk, particularly specify that three notices were posted in three of the most public places in the town

eight days previous to the time of meeeting. As we construe the statute, there can be no higher or better evidence of the fact. * * * We think the full recital in the final order of a strict performance of the duty is sufficient to confer jurisdiction. The case of Commissioners *v.* Harper, 38 Ill., 103, is not similar to this in the facts. This court held in that case that the giving of the notice was a jurisdictional fact, which would never be presumed in a direct proceeding. In that case the facts as to the posting of the notice were not recited in the order declaring the road a public highway."

The ruling in the case of Shinkle *v.* McGill, *supra*, was approved in Frizzell *v.* Rogers, 82 Ill., 109, but in that case the record of the commissioners did not contain the recital necessary to confer jurisdiction, and there being no other proof thereof, it was ruled it did not appear the commissioners had jurisdiction to enter the order.

In Board of Supervisors *v.* Magoon, 109 Ill., 142, in disposing of the objection it was not proven the commissioners had posted the notices required by statute to authorize them to act, we said: "The commissioners recite, in the order entered at the hearing, that they met at the time and place named in the notice, and that is evidence that notice was given. (See Wells *v.* Hick, 27 Ill., 343; Frizzell *v.* Rogers, 82 *id.*, 109.) We are clearly of opinion the record shows that the highway commissioners had jurisdiction."

The rule to be deduced from what was said by Mr. Cooley in his work on Taxation (8th ed., p. 465), and by Mr. Dillon in his work on Municipal Corporations (4th ed., p. 800), is that when the
446 assent or petition of a designated number of persons is necessary to the jurisdiction of the city council or the proper authorities to take official action, the finding of the council or body that the requisite number of persons had assented or petitioned for action on the part of said council or authorities is not conclusive of the jurisdictional fact, but is sufficient in the absence of countervailing proof.

Many adjudged cases are cited by appellants as in support of their contention the recitals found in the record of the corporate authorities in the case at bar have no potency whatever as evidence that a lawful petition was presented. We have examined these authorities. It is impractical to attempt to review them. We think they may be divided into four classes: (1) Those wherein the rule is announced that a record showing merely that ultimate action was taken by an official body (not judicial in character) does not establish, even *prima facie*, that a fact necessary to the jurisdiction of the body to act existed; (2) those holding that a recital in a record of the proceedings of such a body that a jurisdictional fact existed was not conclusive of the existence of such fact, but might be made the subject of opposing testimony; (3) those where the facts recited were not sufficient to establish the jurisdictional fact; (4) those wherein it is held that on consideration of the recitals and all other testimony produced upon the point the existence of the jurisdictional fact was not maintained by the preponderance of the evidence.

We do not affirm authorities are wholly wanting to sustain the

view that recitals of the character under consideration have no evidentiary force, but we venture to assert the overwhelming weight of authority is to the contrary, and that all well considered de-
447 cisions will be found to fall within one or the other of the classes hereinbefore mentioned. In the case of Thorn v. West Chicago Park Com'rs, 130 Ill., 594 (an adjudication much relied upon by appellants), the power of the commissioners to adopt an ordinance appropriating a street for the purpose of connecting a park boulevard or driveway with other parts of the city arose for determination. It was held such power could be exercised only by the consent, in writing, of the owners of a majority of the frontage of lands or lots on such street. The park commissioners adopted an ordinance appropriating portions of Twelfth street and Ogden avenue for the purpose of connecting Douglas park with other portions of the city of Chicago. The ordinance provided for the improvement of said portions of said streets by special assessments. On the hearing of the application for the confirmation of the assessment-roll the commissioners undertook to establish the necessary consent of the owners of property on said street by producing a paper purporting to be a petition of such owners. The trial court received the petition in evidence over the objections of the objectors. This court held said petition was not competent to be received in evidence for the reason the signatures of such alleged consenting petitioners were not properly authenticated, and also because it did not appear that the alleged consenting petitioners were the owners of a majority of the land fronting on the proposed improvement. In disposing of the case it was said the fact this consent petition was acted upon by the commissioners, and that it was the duty of such commissioners, in the first instance, to determine whether the owners of a majority of the land involved had consented to the appropriation of the street, could have no effect to establish that the commissioners had jurisdiction to carry out the powers conferred by the statute.

It will be observed the commissioners in that case vol-
448 untarily elected to attempt to prove in the trial court the requisite consent that the streets might be appropriated as contemplated by the ordinance by the production of the written consents in the nature of a petition in writing. The trial court held such written petition made a *prima facie* case for the commissioners. The objectors appealed. This court found the writing so produced was wholly insufficient to authorize the commissioners to act, and declared the fact the commissioners were required in the first instance to determine for themselves whether the requisite number of property-holders had consented to the proposed appropriation of the streets, and that said commissioners had determined they had jurisdiction to act from an inspection and consideration of the petition, could have no effect as presumptions in favor of the authority of the commissioners to adopt the ordinance. The commissioners having voluntarily produced as evidence a petition as constituting their authority to act, and such petition proving to be wholly insufficient to sustain such claim, it would have been beyond reason to hold that the jurisdiction of the commissioners could be

established and the judgment appealed from affirmed on the ground they considered the petition to be sufficient and had acted upon it in that view. The decision cannot be regarded as the declaration of this court that the recitals of fact of the commissioners in an ordinance that the requisite petition had been presented could not be availed of in the trial court as *prima facie* proof of the truth of the facts recited. We think the recital in such an ordinance of the finding of the corporate authorities that a preliminary fact necessary to confer jurisdiction and power on them to act existed is sufficient *prima facie* evidence of the existence of such fact. If the truth of the recital be challenged by testimony having a controverting tendency, it becomes an issue of fact, and the burden rests upon the commissioners to sustain the truth of the recital by a preponderance of all the testimony bearing upon the point.

449

There is no force in the insistence the facts so recited are insufficient to show the requisite petition was before the said corporate authorities. True, the prayer of the petition is not recited. It is recited that the park commissioners desired to improve the boulevard, and had delivered to the corporate authorities plans, specifications, and estimates of the cost of the proposed improvements, together with a petition of the owners of a majority of the land fronting on said improvement, and that the corporate authorities determined the petition contained the signatures of the owners of the majority of the land fronting on said proposed improvements. The proviso of the statute making a petition necessary is that "no improvement shall be made or constructed except upon the petition of the owners of a majority of the land fronting on the proposed improvements." The recital is as broad as the statute, and the context discloses with unmistakable certainty that the petition was that which the statute required should be filed. Whether the improvements should be paid for out of the general tax fund, or wholly or in part by special assessment or special taxation, was wholly for the corporate authorities to determine. The manner of raising the fund was not a matter to be referred to in the petition, hence no recital as to the prayer of the petition in that respect was necessary.

The plans and specifications adopted by the ordinance provided that a strip sixty feet in width on each side of the boulevard should be improved, the intervening space being a parkway. The strips to be improved were parts of the same general boulevard, and would be connected by intersecting streets. The corporate authorities were justified in regarding the entire enterprise as but one and a single improvement. City of Springfield *v.* Green, 120 Ill., 269; Church *v.* People, 179 *id.*, 205.

450

The evidence was properly held insufficient to show that, as was claimed, a large sum included in the assessment was expended in defraying the cost of improving the parkway which intervened between the strips the ordinance provided should be improved.

Prior to the adoption of the ordinance a "gravel roadway" had been constructed along the boulevard. This roadway was located

within the limits of the strip to be improved on the side of the boulevard upon which the property of some of the appellants abutted. Whether the property so adjacent to this gravel road should be regarded as having received as great benefit from the improvement made under the ordinance as other property which abutted on the other side of the highway was the subject to which the testimony of a number of witnesses was devoted. The testimony was not harmonious. We incline to agree with the trial court that no distinction in the matter of benefits ought to be made, under the evidence, because of the previous existence of the gravel roadway.

We do not think the appellant Lombard has any just ground of complaint as to the amount assessed against his lots. In the judgment under the prior void ordinance the benefits to his property were assessed at the sum of $1,000. The appellant Lombard, in his objections, says this assessment of $1,000 was by an agreement of the parties, and that afterwards a subsequent agreement was entered into that he should pay the appellees the sum of $2,000, making a total of $3,000 to be paid by him. The benefit to his property was assessed at $3,800. It seems from the testimony the commissioners claimed a building line had been established on
451 Lombard's property which restricted the erection of buildings thereon within fifty feet of the line of the boulevard. His lots were but ninety-two feet, or thereabout, in depth, and but about forty-two feet remained available for buildings, and the assessment of benefits in the sum of $1,000 was based upon the alleged existence of such building restrictions. It appeared that Lombard subsequently filed a petition under the burnt-records act to establish title to the premises, and made the park commissioners parties defendant for the purpose of procuring a decree declaring the property free from such building line. A decree was entered in that proceeding by consent, so far as it touched upon that question. The arrangement was, Lombard's property should be assessed $2,000 and the building line should be placed at ten feet from the margin of the boulevard. Subsequently the decree was vacated as to the park commissioners and a final decree entered declaring the property to be free from any building restrictions whatever. The court correctly held the property of the objector Lombard was subject to assessment in the amount it should be found to have been benefited by the improvement, without regard to the former judgments or agreements, for the reason all of such judgments and agreements were avoided by the rendition of the decree, at the instance of said Lombard, relieving his lots from all restrictions whatever as to the location of buildings thereon.

Believing the record to be free from error, the judgment appealed from is affirmed.

Judgment affirmed.

452 And afterwards, to wit, on the 10th day of November, A. D. 1899, there was filed in said cause a certain petition and order in the words and figures following:

In the Supreme Court of Illinois, to the October Term, A. D. 1899.

EDMUND A. CUMMINGS ET AL., Appellants, *vs.* WEST CHICAGO PARK COMMISSIONERS, Appellees.	Appeal from County Court, Cook County.

To the chief justice of the supreme court of the State of Illinois:

The undersigned petitioners, J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert and Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, who are the appellants in the above-entitled cause, respectfully represent that in the records of said cause they interposed in the court below objections based upon the fourteenth amendment of the Constitution of the United States, which objections were overruled and decided against the appellants; that on their appeal in this court they raised and argued the same questions which were decided against them. They desire to prosecute a writ of error from the Supreme Court of the United States to review the decision of this court in said cause, and respectfully pray that the writ of error thereon may be directed by your honor, and that the same may be made a supersedeas, and that the amount of the supersedeas bond may be fixed and determined.

Respectfully submitted.

HELEN M. JAMIESON,	J. L. LOMBARD,
AGNES G. REILLY,	E. A. CUMMINGS,
CHARLES J. REILLY,	W. H. DOBLE,
JOSEPHINE T. REILLY,	J. N. VANCE,
MARY C. REILLY,	FRANCIS J. DOUGHERTY,
HELEN C. REILLY,	LAMBERT TREE,
MICHAEL A. REILLY,	ANNA J. TREE,
THOMAS W. REILLY, AND	MICHAEL REILLY, JR.,
MATILDA C. REILLY,	GEORGE V. REILLY,

By N. G. MOORE, *Their Sol'r.*

WILSON, MOORE & McILVAINE,
Counsel for Petitioners.

453 In the Supreme Court of the United States of America, October Term, A. D. 1899.

E. A. CUMMINGS ET AL., Plaintiffs in Error, *vs.* WEST CHICAGO PARK COMMISSIONERS, Defendants in Error.	No. —. Writ of Error to the Supreme Court of Illinois.

Assignment of Errors.

Afterward, to wit, on the fifth Monday of October, in this term, before the justices of the Supreme Court of the United States, in the city of Washington, come the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, plaintiffs in error, by Messrs. Wilson, Moore & McIlvaine, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that—

First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and of each of them.

Second. The county court of Cook county should have dismissed the petition for confirmation of the said assessment on the motion of plaintiffs in error on the ground that upon its face the record was insufficient to support the said assessment, and also on
454 the further ground that in view of the evidence before the court the same appeared to be insufficient in law, and the said supreme court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the county court of Cook county had jurisdiction to confirm the assessment appealed from upon the property of the plaintiffs in error and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by the ordinance and proceeding originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after completion of the work.

Sixth. If the court was right in holding that the provision in the ordinance of March, 1893, for a special assessment to pay for said improvement had any validity, then the court erred in denying plaintiffs in error and each of them the benefit of the judgment of the June term, 1893, confirming the assessment then before the court.

Seventh. As to plaintiff in error Lombard, the court erred in denying him the benefit of his contract with the defendants in error, fixing the amount of the assessment on his property.

Eighth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Ninth. That by the record aforesaid it appears that the
455 judgment aforesaid was given for the said The West Chicago Park Commissioners against the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, whereas, by the law of the land, the said judgment ought to have been given for the said J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly against the said West Chicago Park Commissioners, and the said J. L. Lombard, E. A. Cummings W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly pray the judgment aforesaid may be reversed, annulled, and held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

WILSON, MOORE & McILVAINE,
Counsel for Plaintiffs in Error.

456 In the Supreme Court of Illinois, October Term, A. D. 1899.

E. A. CUMMINGS ET AL., Appellants,
vs.
WEST CHICAGO PARK COMMISSIONERS, Appellees.
} Appeal from County Court, Cook County.

Order.

Upon motion of Messrs. Wilson, Moore & McIlvaine, attorneys for appellants, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500.00).

JAMES H. CARTWRIGHT,
Chief Justice.

November 6, 1899.

457 And afterwards, to wit, on the 15th day of November, A. D. 1899, there was filed in said cause a certain bond in the words and figures following:

Know all men by these presents that we, J. L. Lombard, E. A. Cummings, W. H. Doble, J. N. Vance, Francis J. Dougherty, Lambert Tree, Anna J. Tree, Michael Reilly, Jr., George V. Reilly, Helen M. Jamieson, Agnes G. Reilly, Charles J. Reilly, Josephine T. Reilly, Mary C. Reilly, Helen C. Reilly, Michael A. Reilly, Thomas W. Reilly, and Matilda C. Reilly, as principals, and Edward S. Judd, as surety, are held and firmly bound unto the West Chicago Park Commissioners in the sum of five hundred dollars ($500.00); for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this tenth day of November, A. D. 1899.

The condition of the above obligation is such that whereas, on the 13th day of October, A. D. 1899, a judgment of affirmance was rendered by the supreme court of the State of Illinois, being in the October, 1899, term of said court, in a certain cause therein pending entitled on the docket of said court "Cummings, *et al. vs.* The West Chicago Park Commissioners," in which said proceeding said principal obligors were appellants from a judgment rendered by the county court of Cook county, Illinois, in the nature of an order confirming a special assessment levied by said appellees upon lots and lands of said appellants, in and by which said judgment of said county court and said supreme court said principal obligors claim that rights asserted by them under the Constitution of the United States were denied them; and whereas said principal obligors have sued out a writ of error from the Supreme Court of the United States to review said judgment of affirmance, and have prayed that the same be made a supersedeas:

458 Now, if the principal obligors above named shall prosecute their said writ of error to effect and if they fail to make their plea good shall answer all damages and costs, then this obligation to be void; otherwise to remain in full force and effect.

JOSIAH LOMBARD. [SEAL.]
E. A. CUMMINGS. [SEAL.]
W. H. DOBLE, [SEAL.]
By N. G. MOORE, *His Attorney-in-fact.*
J. N. VANCE, [SEAL.]
By E. A. CUMMINGS, *His Att'y-in-fact.*
FRANCIS J. DOUGHERTY, [SEAL.]
By N. G. MOORE, *His Att'y-in-fact.*
MICHAEL REILLY. [SEAL.]
GEO. V. REILLY, [SEAL.]
By JOHN J. REILLY, *His Att'y-in-fact.*
HELEN M. JAMIESON, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*

THOMAS W. REILLY, [SEAL.]
By J. REILLY, *His Att'y-in-fact.*
AGNES G. REILLY, [SEAL.]
By J. REILLY, *Her Att'y-in-fact.*
CHAS. J. REILLY, [SEAL.]
By J. REILLY, *His Att'y-in-fact.*
JOSEPHINE T. REILLY, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*
MARY C. REILLY, [SEAL.]
By JOHN J. REILLY, His *Att'y-in-fact.*
HELEN C. REILLY, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*
459 MICHAEL A. REILLY, [SEAL.]
By JOHN J. REILLY, *His Att'y-in-fact.*
LAMBERT TREE & ANNA J. TREE, [SEAL.]
By HOWARD G. GREY, *Their Att'y-in-fact.*
MATILDA C. REILLY, [SEAL.]
By JOHN J. REILLY, *Her Att'y-in-fact.*
EDWARD S. JUDD. [SEAL.]

Approved by me this 11th day of November, A. D. 1899.
JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

460 In the Supreme Court of the United States, October Term, A. D. 1899.

CUMMINGS ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } No. 461.

Stipulation as to Printing of Record.

It is hereby stipulated between the plaintiffs in error, by their attorneys, and the defendants in error, by their attorney, that in printing the record in the above-entitled cause the clerk shall omit therefrom the following parts of the record:

1. The whole of the oral testimony of Edmund A. Cummings.
2. The whole of the oral testimony of George Birkhoff, Jr.
3. The whole of the oral testimony of Henry B. Fargo.
4. The whole of the oral testimony of Christian F. Schultz.
5. The whole of the oral testimony of Josiah L. Lombard. (But the judgment of confirmation offered in evidence in connection with the testimony of Josiah L. Lombard and while he was on the stand is not to be omitted.)
6. The whole of the oral testimony of Nathan G. Moore.
7. The whole of the oral testimony of George W. Dorr; also the plat produced by Mr. Dorr and used as a part of his testimony (but none of the original documents offered in evidence at the close of Mr. Dorr's testimony are to be omitted, but the same are to be printed in full).

8. The oral testimony of Maggie B. Magee.
9. The whole of the oral testimony of J. W. Mott.
10. The whole of the oral testimony of Oscar F. Brady
11. The whole of the oral testimony of George F. Talty.

461 12. The whole of the oral testimony of Francis A. Barnes.
13. The oral testimony of William L. Hoerber.
14. The whole of the oral testimony of Dillon B. Hutchinson.
15. The whole of the oral testimony of Charles D. Cole, and also the plat produced by Mr. Cole as a part of his evidence.

All the remainder of the said record, excepting only the said fifteen items above mentioned, is to be printed.

The plaintiffs in error hereby state, in pursuance of rule 10 of the Supreme Court, that they expect to rely on each and all of the assignments of error which have been attached to the record filed in this cause, and that in their judgment the matters above directed to be omitted from the record are not necessary for the consideration thereof or any of them.

Chicago, Ill., January 26th, 1900.

JOHN P. WILSON,
WILLIAM B. McILVAINE,
Counsel for Plaintiffs in Error.
FRANCIS A. RIDDLE,
Counsel for Defendant in Error.

462 [Endorsed:] File No., 17,575. Supreme Court U. S., October term, 1899. Term No., 461. J. L. Lombard *et al.*, pl'ffs in error, *vs.* The West Chicago Park Commissioners. Stipulation to omit parts of record in printing. Filed Jan'y 29, 1900.

Endorsed on cover: File No., 17,575. Illinois supreme court. Term No., 461. J. L. Lombard, E. A. Cummings, W. H. Doble, *et al.*, plaintiffs in error, *vs.* The West Chicago Park Commissioners. Filed November 24, 1899.

No. 160.

Brf. of Wilson & McIlvaine for P. C.

Office Supreme Court U. S.
FILED
JAN 5 1901
JAMES H. McKENNEY,
Clerk.

Filed Jan. 5, 1901.

IN THE Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 160.

J. L. LOMBARD, E. A. CUMMINGS, W. H. DOBLE ET AL., *Plaintiffs in Error,*
vs.
THE WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*

In Error to the Supreme Court of the State of Illinois.

(175075.)

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFFS IN ERROR.

JOHN P. WILSON,
WILLIAM B. McILVAINE,
Counsel for Plaintiffs in Error.

BARNARD & MILLER PRINT, CHICAGO.

1889

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 160.

J. L. LOMBARD, E. A. CUMMINGS, W. H. DOBLE et al.,
Plaintiffs in Error,
vs.
THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.
(175075.)

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFFS IN ERROR.

I.

STATEMENT OF FACTS.

The West Chicago Park Commissioners are a *quasi* public corporation, organized and having authority within the single town of West Chicago, one of seven towns which (together with parts of other towns) comprise the territory of the city of Chicago. The West Chicago Park Commissioners derive their authority under acts of the legislature of Illinois, which are not here in dispute, under which, upon certain conditions, and pursuing certain methods, they were entitled to make improvements by special assessment on boulevard and park property under their jurisdiction. There were several methods

permitted by law, but the one adopted in the present instance provided for an application by the defendants in error to the corporate authorities of said town of West Chicago to cause an assessment for the improvement planned by the Park Commissioners to be levied and confirmed.

On March 28, 1893, the said Board of Park Commissioners having made due application, accompanied by their plans, the town authorities, pursuant thereto, made and adopted an ordinance for improving Douglas boulevard, which was one of the boulevards previously acquired by the said Park Board by eminent domain. Said ordinance set forth in detail the nature of the improvement intended to be made, and proceeded as follows:

> "Section 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to the corporate authorities of the town of West Chicago, shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.
>
> "Section 2. That said special assessment shall be divided into installments, and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law." (See printed record, page 42; Trans., 87.)

Douglas boulevard, as a whole, is 250 feet wide, but the central 130 feet is to be a lawn, planted with trees and shrubbery, and the cost of this is not included in the

present assessment, which relates to the outer sixty feet of the boulevard on each side.

Pursuant to the said ordinance an assessment was prayed for by petition to the County Court of Cook County, according to the statute hereinafter cited, and, commissioners having been duly appointed, an assessment roll was made and filed, in which certain sums were charged against the property of each of the plaintiffs in error herein, all of which abutted thereon, the details of which are not material in this controversy. The petition prayed the County Court to confirm the said assessment, and notices were duly given, in response to which objections were filed on behalf of the property of these plaintiffs in error.

On July 8, 1893, a judgment in the nature of an order of confirmation was entered in the County Court, pursuant to the said petition, confirming the assessment reported by the commissioners thereunder, the amounts charged to various properties being first largely reduced. It was thereby found that as to the property hereinafter mentioned objections had been filed and continued from time to time, until a final hearing had been had thereon; said order then proceeds as follows:

> "The court, having full jurisdiction, as aforesaid, in the premises, and of the subject-matter, and of all the parties interested in said assessment, further finds that Philip M. Prescott, as the owner of Lots 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, in sub-block 2, in block 1, and of lots 14, 15, 16, 17, 18, 19, 20, 21, of block 2, and lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, in sub-block 2; 22 and 23 in sub-block 2 of block 5 of Prescott's Douglas Park Addition to Chicago, said addition being a subdivision of blocks 1, 2, 5 and 10, in the Circuit Court partition of the east ½ of the north-east ¼, and that part of the east ½ of the south-east ¼ (being north of the center line of Ogden avenue), of section 23, township 39 north, range 13 east of the third principal meridian, has filed objections to the

> confirmation of said special tax or special assessment as against all of the lots herein last above described; and the court being fully advised in the premises, and after the introduction of evidence before the court on the part of said corporate authorities of the town of West Chicago, and also in behalf of said Philip M. Prescott, objector as aforesaid, and after the argument of counsel for the respective parties, overrules said objections in all things except as to the total amount of benefits to be specially taxed or levied upon said several lots so as hereinabove last described." (See Printed Record, p. 63; Trans., p. 331.)

The order thereupon proceeded to find that the said premises were specially benefited to the extent of certain sums specifically fixed in the said judgment, and thereupon, after specific findings as to each of said lots, proceeded:

> "And the court therefore orders that said lot 1, sub-block 2 of block 5, be and the same is hereby specially taxed the said sum of $345.95 as special benefits resulting thereto by reason of said proposed improvements, and that said lots 2, 3, 4, 5, 6, 7, 8, 9 and 10, in said sub-block 2 of block 5, so objected for by the said Philip M. Prescott, be each severally specially taxed the sum of $212.50 as the amount of benefits resulting to each of said lots 2 to 10, inclusive, by reason of said improvement, and that the respective and several amounts so specially taxed against each of said several lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 be, and the same is, hereby made a specific lien upon each of said lots last above mentioned for the amounts so severally taxed against each of the same, and that said amounts so specially taxed shall be enforced and collected against said lots 1 to 10, inclusive, in said sub-block 2, respectively, in the manner provided by law." (Printed Record, page 64; Trans., 333.)

Among the lots as to which said findings were specifically made, above referred to, are certain of the lots at present assessed to and owned by the plaintiffs in error following: E. A. Cummings, W. H. Doble and Francis J. Dougherty.

The said order of confirmation proceeded, in precisely

the same form, to sustain the objections of each of the other plaintiffs in error herein (excepting Mr. Lombard, whose property was brought into the assessment roll by agreement, as hereinafter stated), in respect to the *amount* charged against their premises for the said improvement, and found specifically the amount for which said respective premises should be charged, and overruled their other objections, directing, pursuant to the provisions of the ordinance, that the assessment against each lot should be paid in five annual installments.

In the petition for said order of confirmation, upon which the same was founded, it is alleged that the preliminary petition for the making of said improvement, which by law is required to precede the action of the Park Board, prayed that the same should be made for "making and levying a special tax or special assessment *upon the property abutting on said boulevard,* for the purpose of paying the cost of such improvement as proposed."

And in the petition for the levying of the charge, and for its confirmation, which was filed in the name of the Town of West Chicago, on the application and request of the West Chicago Park Commissioners, there was recited as authority for the said proceeding an act of the legislature of Illinois, approved May 2d, 1873, in force July 1st, 1873, entitled:

> "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments";

and in the same petition it is alleged that

> "under and by virtue of the said act last cited the corporate authorities of towns, in which any such parks or boulevards were located, were authorized to levy a *special assessment*

or special tax on the contiguous property abutting on said boulevard, for the purpose of paying the cost of improving the same."

Throughout the order of confirmation, in most places in specific terms, the charge provided for upon the abutting premises was described as a "Special tax." In illustration of this we quote from said judgment of confirmation the following:

(Printed Record, page 64; Transcript, 333):

"The court therefore orders that lot ...., block ...., be and the same is hereby *specially taxed* the said sum of ..... dollars, as special benefits resulting thereto by reason of said proposed improvement, and that lots ...., block ...., be each severally *specially taxed* the sum of ..... dollars."

And from page 65 as follows:

"And the court orders that said sum of ..... dollars be and the same is hereby made a specific, valid and binding *special tax* against the property last above described, and here orders that the *special tax* of ..... dollars so levied against said real estate be and remain a just, valid and legal *special tax* against said real estate so objected for."

See also same thing with reference to sundry other properties on said page 65, (Transcript 336); also page 66, (Transcript page 337), from which we also quote the following:

"And that the amounts above mentioned as the proper sums to be *specially taxed* against the several lots, blocks, pieces and parcels of land described in the objections of said objectors, are to remain as the amounts to be *specially taxed* against said lots, blocks, pieces and parcels of real estate described in the several objections filed in this court in this cause, and the *special tax* against the several lots, blocks, pieces and parcels of real estate so found by this court in respect to said several objections of said several objectors, shall be and the same is hereby confirmed in all things."

Also on page 66 of the printed Record, (Transcript page 338), is the following:

> "And the court further finds that the said *special tax* so ordered to be corrected by the court has in fact been made by the said commissioners in proportion, as near as might be, to the benefits resulting to the lots, blocks, pieces and parcels of real estate so specially taxed for the purpose of paying the cost of said proposed improvement of said boulevard, and that each separate lot, block, piece and parcel of land contained and described in said assessment roll as abutting upon said Douglas boulevard, has been in fact so *specially taxed* its just share of the cost of said improvement."

And also the following, upon the same page:

> "And the court further finds that the total sum of benefits so *specially taxed* upon each separate lot, block and parcel of real estate so abutting upon said Douglas boulevard, does not exceed the amount of special benefits so *specially taxed* to each of the said several lots, blocks, pieces and parcels of land, contained in said assessment roll and that all of the proceedings herein are regular and in strict conformity to law."

We quote the foregoing to show that throughout the said proceeding, in the ordinance, petition and order of confirmation, it was assumed and stated that the *entire cost* of said improvement was to be, and was in fact, charged upon the property abutting upon the proposed improvement, and no other, and that no provision was made in the ordinance, and no prayer was made in the petition, for any ascertainment or means of ascertaining the actual benefits which any of the property would receive from the proposed improvement. There is language in the order of confirmation, (Pr. Rec., p. 61; Tr., p. 326), reciting that the commissioners appointed by the court to make the assessment did make such an investigation, but it was not asked in the petition nor provided for in the ordinance, and so, if made, which does not otherwise appear, it was the act of unauthorized persons, done con-

trary to the express requirement of the ordinance that the whole cost was to be charged on the abutting property, whether benefited or not.

Even in the order of confirmation the court will see, as we have quoted above, (Pr. Rec., p. 66; Tr., p. 338), that the special findings as to the benefits derived by these particular parcels are merely:

1. That in distributing the total cost upon all the property the distribution was made *in proportion* to the benefits each lot would receive.

2. That the total amount of benefits derived by all the property would not *exceed* the amount charged upon it.

This last finding would seem to be immaterial, but plainly there was no finding, and no effort to make one, that the abutting property would be benefited the amount of said charge.

One objection we make in this court to the validity of the proceeding is raised by this circumstance, and we mention it in this connection for greater clearness, viz.:

An ordinance of a municipality providing for a charge of the *entire cost* of a proposed improvement on the abutting property, no matter how distributed between the different parcels, is in conflict with the constitution where no provision is made for ascertaining in advance that the total benefits actually derived by the respective parcels of property from the proposed improvement would equal the amount of the charge.

Pursuant to the foregoing ordinance, and the assessment made and confirmed therefor, Douglas boulevard was improved as described in the said ordinance, at a cost of $250,207.20. (See p. 11, Pr. Rec., Tr., p. 15.)

Two years went by, during which the first and second annual installments of this assessment matured, and were paid by most of the property owners. The statute of Illinois provides that when each annual installment matures an application for judgment against the lots or tracts delinquent at a specified time shall be made in the County Court. Upon such application (by the law as it then was) "no defense or objection shall be made or heard which might have been interposed in a proceeding for the making of such assessment or the application for the confirmation thereof." (Hurd's Stat., 1895, p. 283, § 153.)

On the application for judgment of sale against certain delinquent property for the third installment of said assessment, objections were filed and overruled in the lower court, but on appeal the Supreme Court of the state reversed the judgment of the lower court, and held that the said judgment of confirmation entered on the 8th of July, 1893, was *void,* and that the County Court had acted without jurisdiction in confirming the said assessment, by reason of the invalidity of the ordinance for the improvement.

Culver v. *People,* 161 Ill., p. 89.

On the trial of the present case it was admitted that the said ordinance, passed by the said Park Commissioners March 28th, 1893, was the same ordinance which was in question and considered by the Supreme Court of the state in the case of *Culver* v. *People,* 161 Ill., p. 89. (See p. 52 of Pr. Rec., p. 114, Tr.)

It was also admitted on the same hearing that the said boulevard was completed, in its present condition, before the petition in this cause (the new petition hereafter referred to) was filed. (See p. 52, Pr. Rec., p. 114, Tr.)

After the decision in the Culver case the whole of the said proceedings, and the assessment for said improvement levied under said ordinance of March 28, 1893, were by the petitioners, the West Chicago Park Commissioners, dismissed in open court, and abandoned. (See recitals of the petition in the present case, p. 7 of the Pr. Rec., p. 9 of Tr.)

A new ordinance was passed on July 14, 1896, after the work had been done and completed, reciting the former proceedings, the completion of the improvement, the abandonment and dismissal of the prior proceedings, and the failure thereof, and providing as follows:

> "Section 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed for, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz.: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled 'An Act to Enable Park Commissioners or Park Authorities to Make Local Improvements and Provide for the Payment Therefor,' approved June 24, and in force July 1, 1895." (See Pr. Rec., 7; Tr., 9.)

A new estimate was made, pursuant to the said ordinance, of the cost of the said improvement, in which it was recited that the same included the cost of the work as already done, and the cost of making and levying the new special assessment provided for in said ordinance, the total being $250,207.20, as above stated. (See Pr. Rec., p. 8; Tr., pp. 11 and 12.)

A new assessment was made, disregarding the old assessment, charging each lot with a particular portion of the said estimate of cost, crediting in another column the amount already paid under the previous proceeding, and carrying out as a charge against the said property the net balance remaining.

Without going into close details as to the amount charged against specific lots of plaintiffs in error, it will answer the present purpose to state that the property of the plaintiff in error J. L. Lombard was assessed in the new roll $3,866; he was credited with $400 previously paid, being the first and second installments ot the prior assessment, and remains charged with $3,466, balance. (See p. 10 Pr. Rec., Tr., p. 14.)

The same property of the plaintiff in error Lombard in the previous proceeding was assessed the sum of $1,000, which assessment was confirmed in said order of July 8, 1893. (See p. 65 of Pr. Rec., p. 336, Tr.)

It will also be observed, as to the said Lombard's property, that it had not been assessed by the commissioners in the original proceeding, although in fact abutting, having been omitted by some error; but was brought into that proceeding and made a part of that roll by *mere consent*, upon condition that, because of its extremely shallow depth, it should not be charged more than $1,000 for the said improvement; and the said agreement was carried into effect in the said judgment of July 8th, 1893. These particulars are found and stated in the record of that judgment. (See Pr. Rec., p. 65; Tr. of Rec., p. 335-336.)

The lots of the plaintiffs in error the heirs and executors of Michael Reilly were assessed in the new proceeding $7,041.56; they were credited with payments of $963.22, and they remain charged in the present roll with a balance of $6,079.34. In the assessment confirmed July 8th, 1893, the same lots were originally assessed at about the same amount as in the present case, but by the judgment in that case said charge was found excessive,

and was materially reduced, and the assessment thereon confirmed at the sum of $2,408.39, (Pr. Rec., p. 66; Tr., p. 337).

The property of plaintiffs in error Lambert Tree and Anna J. Tree is assessed in the present proceeding $3,837.33; $765 is credited as paid, and the property charged with the balance of $3,113.33. In the assessment of 1893 the same property was charged about the same sum, but by the order of confirmation in that case said charge was found to be excessive, and was reduced to $1,912.50, and at that amount confirmed. (Pr. Rec., p. 64; Tr., p. 334.)

These plaintiffs in error, after it had been held by the trial court that the new proceeding was not void because of the invalidity of the original ordinance, the work being completed before this proceeding was begun, pleaded the said judgment as an adjudication, and moved the court below to strike out from their respective assessments all the excess thereof above the amounts adjudicated by said order of confirmation entered July 8, 1893, and read in evidence the said judgment, with the petition and objections. (See objectors' motion on p. 68 of the Pr. Rec., Tr., p. 420.)

Which said motion the court denied, and plaintiffs in error excepted.

In the assignments of error in the Supreme Court of Illinois this was also urged. (See Pr. Rec., p. 72; Tr., p. 427.)

On the trial in the court below the plaintiffs in error objected to the confirmation of the judgment on the ground:

First. That the said assessments, and the new proceed-

ing to confirm the same, were in violation of the 14th amendment to the constitution of the United States, and especially that part of Section 1 thereof which is as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Second. That the said assessment, "and this proceeding to confirm the same", were not authorized or justified by any valid ordinance for making the improvement in question and paying the cost thereof by special assessment which was passed or in existence prior to the actual making of the said improvement, and therefore were not authorized by any law of the State of Illinois; and the imposition of the said charge, or any charge for that purpose, would be void, and without due process of law, and therefore contrary to the provisions of the 14th amendment to the constitution of the United States.

Third. That the ordinance for the making of said improvement by special assessment on private property was void, and the said work was done without any valid ordinance; therefore the present assessment was levied to pay for work already done: that the said charge was therefore not authorized by any law, and was in conflict with the guaranties contained in the 14th amendment to the constitution of the United States, in this, that it would take the property of the said objectors without due process of law, and that it would deny to said objectors the equal protection of the law.

Fourth. That the only statute on which the said pro-

ceeding and the said assessment were based was adopted in 1895, after the work for which the said assessment was levied had been completed; the imposition of the said charge, therefore, would be contrary to the provisions of the 14th amendment to the constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny the said objectors the equal protection of the law.

Fifth. That the statute of 1895, upon which the said assessment and proceeding were based, was in conflict with the provisions of section one of the 14th amendment of the constitution of the United States, and therefore no sufficient authority for the imposition of the charge herein contemplated upon the property of the said objectors.

(See p. 26 of Pr. Rec., pp. 50 and 51 of Tr.)

The said objectors moved to dismiss the entire proceeding for the same reasons, among others; and also moved, as above stated, to strike out all of said assessments in excess of the former adjudication.

(Pr. Rec., p. 28; Tr., pp. 56, 57 and 58.)

Both these motions were denied, and the assessment was confirmed for the full amounts remaining charged against them by the new assessment roll. Upon motion for a new trial the same objections were made, (Pr. Rec., p. 32), and being overruled, judgment was entered against the objectors, who appealed to the Supreme Court of the state, and assigned for error the same objections, among others. (See Pr. Rec., p. 72; Tr., pp. 426, 427.)

The Supreme Court of Illinois affirmed the judgment of the court below, and plaintiffs in error sued out their writ of error from this court, and assigned for error the said judgment of the Supreme Court of Illinois, (which assignments of error are found on p. 86 of the Pr. Rec.; Tr., pp. 453 and 454).

II.

ERRORS RELIED UPON.

1st. The Supreme Court of the state erred in affirming the judgment of confirmation against the property of plaintiffs in error and each of them.

2nd. The County Court of Cook County should have dismissed the petition for confirmation of the said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient to support the said assessment; and also on the further ground that in view of the evidence before the court the same appeared to be insufficient in law; and the Supreme Court erred in sustaining said refusal, and in holding that the same was correct.

3rd. The court erred in holding that the County Court of Cook County had jurisdiction to confirm the assessment appealed from upon the property of plaintiffs in error, and each of them.

4th. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by the ordinance and proceeding originating after the work was done, the original ordinance for the assessment having been void.

5th. The court, having held that the original ordinance for said improvement passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after the completion of the work.

6th. If the court was right in holding that the provision of the ordinance of March, 1893, for the special assessment to pay for said improvement had any validity, then the court erred in denying plaintiffs in error, and each of them, the benefit of the judgment of the June Term, 1893, confirming the assessment then before the court.

7th. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from. (See end of brf. for additional assignments.)

III.

THE PROPOSITION TO CHARGE THE WHOLE COST OF THIS WORK ON THE ABUTTING PROPERTY WAS HARSH AND OPPRESSIVE.

The description of the work proposed, (found on pp. 43-51 of printed record, and plans there inserted), shows that the boulevard in question is 250 feet in width and nearly two miles in length, and comprises a central lawn, 130 feet in width, planted with trees and shrubs, and adorned with flowers, having a forty foot roadway on each side, one asphalt and one granite macadam, with no connections across the lawn except at street crossings. On each side is a sidewalk space 20 feet in width, the sidewalk proper being of cement, 8 feet wide, and the remaining 12 feet finished as a lawn inside the curb, lined with trees and fitted with costly boulevard lamps.

The whole improvement forms a connection between two parks under control of defendants in error, and differs radically from a mere roadway or passage. It is properly, considering its great width, separating the abutting private properties nearly a block, and its ornamental

character, rather an extension of the parks than a drive between them. It is in character and purpose a general public improvement, which confers benefits on the entire township, but these proceedings were begun to charge the entire cost, $250,000, on a narrow ribbon of property on each side, substantially 125 feet in depth.

It is as gross an injustice to attempt to charge the cost of a great general improvement like this on the immediately abutting property as it would be to charge them with the purchase or improvement of the park itself, of which this boulevard is essentially a part. The property owners as a whole have resented it, and resisted from the beginning, and plaintiffs in error, who are sought to be charged with $18,000 of it, are here complaining that it is not merely technically without legal authority, but also arbitrary and oppressive. For a number of reasons we contend that the decision of the courts of Illinois he complained of cannot prevail in this court, and in support of this position submit below our points and authorities.

IV.

BRIEF OF THE ARGUMENT, AND POINTS.

1. The improvement, the cost of which is sought to be charged upon the property of plaintiffs in error, was made in pursuance of an ordinance of the town authorities of West Chicago, on the application of the defendants in error, passed March 28th, 1893, and had no other authority. That ordinance by its terms required the entire cost of the improvement to be charged upon the abutting property. This is in conflict with the constitution of the United States, and the whole proceeding should

have been dismissed on the motion of plaintiffs in error.

Norwood v. *Baker,* 172 U. S., 269.
Lyon v. *Town of Tonawanda,* 98 Fed. Rep., 361.

2. By the law of Illinois no valid assessment can be levied upon private property for the cost of an improvement unless the work is preceded by a valid ordinance providing for a special tax or a special assessment to charge the property.

East St. Louis v. *Albrecht,* 150 Ill., 506.
Weld v. *People,* 149 Ill., 258.
City of Carlisle v. *County of Clinton,* 140 Ill., 512.

See also the opinion of the Supreme Court of Illinois in the present case, Pr. Rec., p. 77.

3. The constitution of Illinois, article 9, sec. 9, is as follows:

> "The General Assembly may vest the corporate authorities of cities, towns and villages with power *to make* local improvements by special assessment, or by special taxation of contiguous property, or otherwise."

4. The statute of Illinois, chap. 24, art. 9, sec. 1 is as follows:

> "The corporate authorities of cities and villages are hereby vested with power *to make* local improvements by special assessment, or by special taxation, or both, of contiguous property, or general taxation or otherwise, as they shall by ordinance prescribe."

5. In the constitution of Illinois, and in the local improvement act above mentioned, the modes of charging private property by special assessment and by *special tax upon contiguous property* are entirely distinct.

Kuehner v. *City of Freeport,* 143 Ill., 92.

6. The ordinance of March 28th, 1893, which by its terms charged the whole cost of the improvement on the abutting property, does not provide for a special assessment, but specifically for a special tax on abutting property.

Special taxes, as distinguished from special assessments, are charged only upon the abutting property. Special assessments, as an independent mode, are charged upon all property found by commissioners to be specifically benefited by the proposed improvement, wherever situated. The ordinance in question, therefore, provided not for a special assessment, but for a special tax.

Hurd's Stat. Ills., 1899, Ch. 24, Art. 9, § 24.

Benefits, therefore, as the limit of charge to parcels of land, were disregarded; and this was the fatal element of the ordinance in *Norwood* v. *Baker, supra.*

7. The ordinance of March 28th, 1893, which was the only ordinance preceding the making of the present improvement, was wholly void as to its provision for any special assessment or special tax.

Culver v. *The People,* 161 Ill., 89.
Farrell v. *Town West Chicago,* 162 Ill., 280.
White v. *Town West Chicago,* 164 Ill., 196.
People v. *Eggers,* 164 Ill., 515.
Steenberg v. *The People,* 164 Ill., 478.
People v. *Lingle,* 165 Ill., 65.
People v. *Markley,* 166 Ill., 51.
O'Neil v. *People,* 166 Ill., 565.
Walker v. *People,* 169 Ill., 474.

8. If construed not to be wholly void, then a petition based upon it, addressed to the County Court, praying

the levy of a special assessment, would confer jurisdiction on the County Court, and its judgment would not be void.

Davis v. *City of Litchfield,* 155 Ill., 392.
Mulford v. *Stalzenback,* 46 Ill., 307.
Galena & C. U. R. R. Co. v. *Pound,* 22 Ill., 414.
Harvey v. *Tyler,* 2 Wall. (U. S.), 328.
Van Vleet on Collateral Attack, 82.

9. When the trial court in Illinois, and the Supreme Court of that state, determined that the ordinance of March 28th, 1893, was void, but nevertheless that it formed a sufficient basis for a special assessment or special tax for work previously completed, it imposed upon the owners of property a charge without due process of law.

C., B. & Q. R. R. Co. v. *Chicago,* 166 U. S., 226.
Backus v. *Fort Street U. D. Co.,* 169 U. S., 559.
Castillo v. *McConnico,* 168 U. S., 674.
Williams v. *Mississippi,* 170 U. S., 213, 224.
Neal v. *Delaware,* 103 U. S., 370, 394.
Ex parte Virginia, 100 U. S., 339, 347.
Henderson v. *Mayor of N. Y.,* 92 U. S., 259, 268.
Guthrie on 14th Amendment, p. 45.

10. The Act of the legislature of Illinois passed June 24th, 1895, assuming to confer authority to pass a new ordinance for a special assessment, after the work had been done, so as to charge the cost of it on private property, is in conflict with the constitution of the United States.

City of St. Louis v. *Clemens,* 52 Mo., 133.
Brady v. *King,* 53 Cal., 44.

Cooley on Taxation, 1st Ed., p. 227.
Cooley on Const. Lim., 2d Ed. (bottom page), 407, 420, 421.
Spencer v. *Merchant*, 125 U. S., 351.
New Orleans v. *Clark*, 95 U. S., 655.

V.

THE STATUTES OF ILLINOIS APPLICABLE HERE.

The statute under which the Park Commissioners originally levied the special assessment in question was approved May 2nd, 1873, and in force July 1st, 1873: from section 3 we quote as follows:

> "In case such Board of Park Commissioners shall desire to improve any boulevard or pleasure way under their control, or any part thereof, * * * they shall make plans and specifications for such contemplated improvement. * * * Such corporate authorities" (meaning the corporate authorities of the township in which the park commissioners have their jurisdiction) "may, upon the receipt of such plans, specifications and estimates, at their next meeting * * * determine by ordinance, to be entered upon the records of such town, whether such improvement shall be made or not; if they shall determine to make the same, they shall also prescribe that the same shall be made by special assessment or special taxation of contiguous property. * * * If such ordinance shall provide that such improvement shall be wholly or in part made by special assessment, they shall direct the supervisor of such town to file a petition in the name of the town, in the County Court of his county, for proceedings to assess the cost of such improvement; such petition shall recite the ordinance for the proposed improvement, and the plans, specifications and estimates of the cost thereof, and pray that the cost thereof may be assessed in the manner prescribed by law. The proceedings to levy and collect such assessment subsequent to the filing of such petition shall in all things, as near as may be, conform to the provisions of Article 9 of an act of the General Assembly of this state, entitled an 'Act to provide for the incorporation of cities and villages' * * * and all of the provisions of said article 9, so far as applicable, shall be in force and apply to any assessment made under this act."

Hurd's Ill. Stat., 1899, Chap. 105, p. 1213.

From article 9, referred to in said park statute, we quote as follows:

Section 23:

> "Upon the filing of such petition the court shall appoint three competent persons as commissioners."

Section 24:

> "It shall be the duty of such commissioners * * * to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement; provided, that no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited."

Hurd's Ill. Stat., 1874, Chap. 24, Art. 9, p. 235.

This is the section of the statute which relates to "special assessments," as distinguished from "special taxes." Other sections which we need not quote require the commissioners to make their report to the County Court, and give notice to the parties interested, who may object. Such objections, being then heard, are determined by the court.

When the ordinance provides for a special tax, as distinguished from a special assessment, the statute is as follows:

Section 17:

> "When said ordinance, under which said local improvement shall be ordered, shall provide that such improvement shall be made by special taxation of contiguous property, the same shall be levied, assessed and collected in the way provided in the section of this act providing for the mode of making, levying, assessing and collecting special assessments."

Hurd's Ill. Stat., 1874, Chap. 24, Art. 9, p. 234.

Subsequent changes were made in this section, but such was the law in 1893 and up to 1895.

Section 39:

> "Upon the application for judgment upon such assessment, no defense or objection shall be made or heard which might have been interposed in the proceeding for the making of such assessment, or the application for the confirmation thereof."

Section 40:

> "When said general officer (who receives the report of delinquency) shall receive the report provided for in the preceding section, he shall at once proceed to obtain judgment against said lots, parcels of land and property for said special assessments due and unpaid, * * * and shall in the same manner proceed to sell the same for the said special assessments," etc., etc.

The only provision of the state constitution on the subject is quoted under heading IV, and need not be here repeated.

VI.

THE ORIGINAL ORDINANCE OF MARCH 28TH, 1893, PROVIDING FOR THE SAID IMPROVEMENT, AND AN ASSESSMENT THEREFOR, WAS VOID.

(a.) *It was void, in the first place, because it assumed to charge the entire cost of the proposed work on the abutting property, without reference to benefits.*

On this point the important provision of the ordinance is as follows:

> "Section 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard * * * (which was the improvement described in the specifications in the ordinance) shall be made, and that *the cost thereof*, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the *contiguous property abutting on said boulevard.*" (See p. 42 Pr. Rec.; p. 87 of Tr.)

No other provision is contained in the ordinance for the payment of any part of the cost of said improvement, nor does it provide for any inquiry into the question whether the abutting parcels will be benefited so much. We suppose this language to be the precise equivalent of a statement,—more full, but not more definite,—that the *whole* cost of the work shall be paid by the abutting property. The language of the ordinance that it shall be paid "by special assessment upon the abutting property" means nothing more than that, in distributing the amount upon the respective parcels of abutting property, the *apportionment* shall be by special assessment; that is to say, distributed among the several parcels *in proportion to* the benefits derived. The commissioners who are to make the roll are permitted no discretion either to leave any part of the cost unassessed or to go outside the "contiguous property abutting on the boulevard." It has been contended that the words "by special assessment" in the ordinance imply, of themselves, that no lot shall be charged more than it is specially benefited, and that all excess, if any, shall be provided for in some other way, presumptively by general tax. This, we think, is a plain error, as applied to the present case. The words "special assessment" might possibly, if standing alone, be construed to mean "in the manner provided by the special assessment statutes of the State of Illinois," and it might be argued therefrom that the course of procedure would be the same, and when all benefits to private property had been exhausted the excess should be provided for by general tax.

We submit that this would be a strain upon the language, more than it is justly capable of; but in the present case the words "special assessment" are expressly

limited by the words immediately following, "upon the contiguous property abutting on said boulevard."

The statutes of Illinois nowhere provide for a special assessment which shall be only "upon contiguous abutting property"; but if they did, it would not alter the fact that the *whole cost* has here to be laid upon the abutting property.

Under the law of Illinois it is customary to so provide, in levying special taxes, as distinguished from "special assessments," that the distribution among parcels may be made *in proportion to benefits,* and this, we submit, is the only reasonable meaning which can be given the language above mentioned.

The ordinance therefore provides definitely that the entire cost shall be charged upon the abutting property, and makes no reservations with respect to the actual benefits sustained. Such an ordinance is forbidden by the constitution of the United States.

In *Norwood* v. *Baker,* 172 U. S., 269, this doctrine was established in this court. In that case the ordinance before the court provided that:

> "The cost and expense of the condemnation of the property, including the compensation paid to the owners, the cost of the condemnation proceedings, the cost of advertising, and all other costs, and the interest on bonds issued, if any, should be assessed per front foot upon the property bounding and abutting on that part of Ivanhoe avenue as condemned and appropriated herein."

An assessment was made for the cost of said improvement, and charged on the abutting property, in accordance with the said ordinance. In that case this court said, page 278:

> "Undoubtedly abutting owners may be subjected to special assessments, to meet the expense of opening public highways

> in front of the property—such assessments, according to the well established principles, resting upon the ground that special burdens may be imposed for special or peculiar benefits accruing from public improvement, * * * but the power of the legislature in these matters is not unlimited. * * * As already indicated, the principle underlying special assessments to meet the cost of public improvements, is that the property upon which they are imposed is peculiarly benefited, and, therefore, the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired if it were established as a rule of constitutional law, that the imposition by the legislature upon particular private property of the entire cost of a public improvement, irrespective of any peculiar benefits accruing to the owner from such improvement, could not be questioned by him in the courts of the country."

And on page 290 the court said:

> "The corporation" (the village of Norwood) "manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not, to the extent of such cost."

In that case the collection of the entire assessment, as to the complainant in the case, was enjoined, and the judgment affirmed in this court

> "upon the ground that the assessment against the plaintiffs' abutting property was under a rule which excluded any inquiry as to special benefits, and the necessary operation of which was, to the extent of the excess of the cost of opening the street in question over any special benefits accruing to the abutting property therefrom, to take private property for public use without compensation." (Page 297.)

If this contention is sustained it follows that there was never any valid ordinance for the present assessment. The result would be, as shown under our next head, that the present assessment is, by the settled law of Illinois, illegal.

But if the ordinance be not construed to cast, by its terms, the whole burden on the abutting property, yet

(b) *The State courts held that it was void, and in a collateral proceeding held that an adjudication founded on it was made without jurisdiction, for that sole reason.*

In either case the motion of plaintiffs in error to dismiss the proceeding should have been granted.

That the said ordinance was in fact decided to be *wholly void* we show in our discussion under the VII and VIII heads, next following.

Although it is true that in their opinion in the present case the Illinois Supreme Court *say* that said ordinance was not wholly void, in the same connection the court announces its adherence to the decision in the Culver case, and others, the necessary result of which is as we have argued. The language of that court in the present opinion does not amount, we submit, to a *construction* of the ordinance, for that was settled in the prior cases below cited, which are expressly adhered to. It is rather a plain refusal to apply the local laws to the case of plaintiffs in error, a right in which they are protected by the constitution of the United States.

The law being, when this proceeding was begun, that such an ordinance was *void*, and the court having so decided, the later decision, if in terms to the contrary, would not govern this court.

Thompson v. *Perrine*, 103 U. S., 816.

VII.

BY THE LAW OF ILLINOIS NO ASSESSMENT CAN BE MADE FOR A LOCAL IMPROVEMENT UNLESS WHEN THE WORK IS DONE A VALID ORDINANCE IS IN EXISTENCE REQUIRING THE COST THEREOF TO BE PAID BY SPECIAL ASSESSMENT.

By the constitution and laws of Illinois, and the uniform construction thereof by the Supreme Court, no charge by way of special assessment or special tax can be lawfully made against the property of a citizen for work which has been previously done, unless *preceding the work* there was a valid ordinance therefor, in which provision was made to charge the cost on the private property by special assessment or special tax. From the above proposition, as a statement of the law, there has been no departure in the courts of Illinois.

The constitution of Illinois provides:

> "The General Assembly may vest the corporate authorities of cities, towns and villages with power to *make* local improvements by special assessment," etc. (Art. 9, Sec. 9, Hurd's Stat. 1899, p. 68.)

The language of the first section of article 9 of the city and village act is precisely the same, (Hurd's Stat. Ill., 1899, Ch. 24, p. 362), and the Supreme Court of that state has held that the two are to be construed alike, the statute giving no authority which is not conferred by the provision of the constitution.

Falch v. *People,* 99 Ill., 137.

The first section of the Park Act of July 1, 1895, (Hurd's Stat. Ills., 1899, Ch. 105, p. 1242), provides that:

> "Any Board of Park Commissioners or Park Authorities * * * are hereby vested with power and authority *to levy,* assess and collect *special assessments* * * * *for the purpose of improving any boulevard,*" etc., etc.

All these provisions have been construed to mean the same thing, to wit: that the improvement must *be made* by special assessment: in other words, the special assessment must be provided for by the municipality in some lawful way *before* the improvement is laid down. So the Supreme Court of Illinois has specifically determined in *East St. Louis* v. *Albrecht,* 150 Ill., 506; *Weld* v. *People,* 149 Ill., 258; *City of Carlisle* v. *County of Clinton,* 149 Ill., 512; and as to the Park officers, in *West Chicago Park Commissioners* v. *Sweet,* 167 Ill., 332.

The statutes themselves are express upon this point. Section 18 of Article 9, City and Village Act, (Hurd's St. Ill., 1899, Ch. 24, p. 362), provides:

> "When any such city shall by ordinance provide for the making of any local improvement it shall, *by the same ordinance,* prescribe whether the same shall be made by special assessment, or by special taxation of contiguous property, or general taxation, or both."

The Park Act of 1873, under which the original ordinance was passed, (Hurd's Ill. St., 1899, Ch. 105, p. 1213), provides:

> "Such corporate authorities. (the township officers, on application of the Park Commissioners), may * * * determine by ordinance * * * whether such improvement shall be made or not; if they shall determine to make the same they shall also prescribe that the same shall be made by special assessment, or special taxation of contiguous property."

The Park Act of 1895 contains the identical provision of article 9 of the City and Village Act, above quoted, requiring them to "by the same ordinance prescribe whether the same shall be made by special assessment," etc., etc. (Hurd's Ill. St., 1899, Ch. 105, p. 1242.)

By the constitution and every statute therefore under

which such an assessment can be levied it is made vital that the ordinance which provides for the work shall also provide for the assessment.

The test of the validity of the new assessment therefore is not the continued existence of an ordinance *describing the improvement to be made,* but the continued existence of such an ordinance *coupled with legislation requiring the work to be paid for by special assessment.* This is the plain meaning of the constitution and of the statutes above cited, all of which provide that municipal corporations may *make* local improvements *by* special assessment or special tax on abutting property.

In the opinion filed by the Illinois Supreme Court in the present case the same proposition is stated. We quote therefrom the following:

> "The constitution and the statutes provide for making local improvements by special assessment, and we have uniformly held that they confer no authority to make a local improvement upon some other plan, or without any provision for a special assessment, and afterward provide for payment by such assessment. The improvement *is to be made* by special assessment, and consequently there must be a provision for its payment by that method *when it is made.* The liability to a special assessment must be created by the ordinance which provides for making the improvement, and such a liability is created by a provision of the ordinance that the cost of the improvement shall be paid by special assessment." (See p. 77 Pr. Rec.; pp. 439-440 of Tr.)

The first step therefore to create such a charge in Illinois is the passage of such an ordinance; and if the ordinance of March 28th, 1893, did not contain "a valid provision for a special assessment, or special tax on abutting property" to pay for the said improvement, then the present assessment, and the proceedings therefor, which were admittedly begun after the improvement had been made, are without authority of law.

The next statutory step, (see the statutes cited herein under heading V), is an application to the County Court by petition, reciting the ordinance for the levying of a special assessment or special tax, praying the levy and confirmation of such charge, whereupon commissioners are appointed by the court for that purpose, who make and return an assessment roll. Notices are then given to the owners of property, and, if objections are filed, they come on for trial, and the judgment entered, if the proceeding is sustained, is a judgment of confirmation of such assessment, or a modification thereof. Such was the judgment of July 8, 1893. Where an assessment is lawfully divided into installments the order of confirmation has the effect to confirm it *in toto*, but the installments are payable annually thereafter.

The next statutory step, for the collection of the assessment, if the owner does not pay the installments as they mature, is for the collector whose business it is by law to receive payment to return, under his oath, the particulars of the delinquency to the county collector of the proper county, by a fixed time each year, and thereupon the county collector applies in the County Court for judgment of sale for the amount so matured, at the same time and in the same manner as for the general tax of each year. Upon that application, in case of special assessments or installments thereof, by the express terms of the statute which we have cited above, no questions can be considered which arose prior to the judgment of confirmation. This would beyond question be the law without such statute. The County Court is a court of record, (Hurd's St., 1899, p. §), and its adjudications on these subjects are as conclusive as those of any other court.

The case of *Culver* v. *The People,* 161 Ill., 89, arose, as we have said in our "Statement of Facts," on an appeal from a judgment for the third installment of the said assessment as confirmed by the County Court July 8th, 1893.

It is perfectly evident, as a legal proposition, that if the County Court had jurisdiction to enter the said judgment of *confirmation,* then on the application for judgment of sale on the third installment, in 1895, objections growing out of conditions which preceded the application to confirm, such as defects or insufficiencies in the ordinance, were already foreclosed by that adjudication. The Supreme Court of the state could not have reversed the judgment of sale in the Culver case *on account of defects in the ordinance,* if the County Court had *any jurisdiction whatever* on the application to confirm. This is well settled in the state courts of Illinois.

From the Culver case, (161 Ill., 100), we quote the following:

> "Where, however, the ordinance is void, all the proceedings based upon it, including the judgment of confirmation, must be void also. This necessarily results from the rule that a valid ordinance lies at the basis of every valid assessment. * * * So, here, this ordinance, which authorized an assessment payable in installments, and directs the deferred installments to draw annual interest, is invalid, and consequently the judgment confirming the special assessment for improving Douglas boulevard was not authorized.
>
> "'Where an assessment is claimed to be illegal from the fact that it was based upon an insufficient ordinance, the objection to the ordinance as being insufficient must be made upon the application to confirm the assessment, and if it is not made then, the judgment of confirmation will be regarded as conclusive when called in question collaterally. But we apprehend that the objections to the ordinance, which are waived when not presented upon the application for a confirmation of the assessment, are those which show that the

ordinance is insufficient in the sense of being irregular, or that it is insufficient for some reason which does not establish its invalidity or void character.'" (Page 99.)

In the case of *People* v. *Eggers,* 164 Ill., 515, that court said:

"It is admitted that the objection sustained would have been a good one if made upon the application for confirmation, but it is claimed that it was too late to make it in this proceeding for a judgment of sale. If the judgment of confirmation was not void, but merely erroneous, this would be true, and the only remedy for such a judgment would be by appeal or writ of error; but if the judgment of confirmation was void, it could be resisted at any time or place, and as well upon an application for a judgment of sale as elsewhere. (*Culver* v. *People,* 161 Ill., 89.)" (P. 517.)

In *Steenberg* v. *The People,* 164 Ill., 478, the objection was that the ordinance was defective in not correctly describing the locality of the improvement. We quote from the opinion:

"It being conceded that the objection made would have been a good one if presented on the motion for confirmation of the assessment, the controversy is over the question whether it could be taken advantage of in the collateral proceeding for judgment of sale. That depends on the question whether the County Court had jurisdiction to take any action in the special assessment proceeding. If it had such jurisdiction its judgment against appellant's lots was of binding force, although there may have been some objection to the entry of judgment of confirmation which, if presented, would have been sustained. In such case the objection cannot be raised in a collateral proceeding. * * * On the other hand, if the County Court acted without jurisdiction in entering its judgment of confirmation, that judgment would be void, and could be successfully resisted anywhere." (Citing *Culver* v. *People,* 161 Ill., 89.) (P. 479.)

In the case of *The People* v. *Lingle,* 165 Ill., 65, the court said:

"The judgment of confirmation cannot be thus attacked" (for insufficiency of the ordinance) "except for matters affecting the jurisdiction. The sufficiency of the ordinance is not of

that character, and must be determined on the proceeding to confirm the special assessment." (Citing *Culver* v. *The People. supra.*) (P. 66.)

In *People* v. *Markley,* 166 Ill., 51, the court said:

"Where, upon an application for the confirmation of a special assessment, the court has jurisdiction to render the judgment of confirmation, such judgment will conclude the landowner from questioning any of the proceedings had prior thereto, on a subsequent application for a judgment and order for sale of the premises; but if the proceedings anterior to the judgment confirming the assessment were so defective as not to authorize the court to act at all upon the question of confirmation, then the objection to these proceedings may be made upon an application for judgment and order of sale. * * * The same rule has been declared in *Clark* v. *People,* 146 Ill., 348; *Culver* v. *People,* 161 Ill., 89, and other cases."

In *O'Neil* v. *The People,* 166 Ill., 565, the court said:

"The objections to the ordinance were not made in the confirmation proceeding. In a case such as this the rule is that the ordinance can be attacked on the ground that it is void, but on this ground only; for, if the ordinance is void, the court, in the assessment proceeding, had no jurisdiction, and all the proceedings based upon the ordinance are consequently void. Thus the question of the validity of the ordinance is a jurisdictional one, and may properly be raised in this proceeding." *Culver* v. *The People,* 161 Ill., 89.

In *Walker* v. *The People,* 169 Ill., 474, the court said:

"It is not a defense to an application for judgment on a delinquent list to say that the ordinance was invalid because it failed to state the nature, character, locality and description of the improvement, unless the failure to comply with the requirement of the statute in that regard is such as to render the ordinance absolutely void. * * * Appellants are bound by the adjudication in the special assessment on the particular real estate in the absence of fraud, where there is jurisdiction of the person and subject-matter."

The Culver case has been several times re-affirmed in the Supreme Court of Illinois, and the same ordinance has been held void again and again, in the same respect and

to the same extent,—namely, in so far that the County Court got no jurisdiction thereby to proceed *even to consider* the petition for an assessment, and its judgment thereon was not merely erroneous but *void;* and nothing to the contrary has ever been held in that court.

Cook v. *People,* 161 Ill., 209.
Farrell v. *Town West Chicago,* 162 Ill., 280.
White v. *Town West Chicago,* 164 Ill., 196.

If, then, *any* validity in the provisions of that ordinance would have conferred jurisdiction to consider it, the effect of the Culver case must have been to adjudge it wholly void, whatever other explanation may now be made of it.

VIII.

WHAT, THEN, IS JURISDICTION?

The question of what constitutes jurisdiction might be taken to be settled without citation of authorities. We understand that it consists in the right of a court to *enter at all* upon the consideration of the question presented to it.

Harvey v. *Tyler,* 2 Wall., 328.
Van Vleet on Collateral Attack, 82.
Board of Commissioners v. *Platt,* 79 Fed. Rep., 567.

The question what, as matter of law, constitutes "jurisdiction" we take to be the same everywhere. The decisions of the courts of Illinois, both those above and below cited, are at least explicit on the subject. From them we extract the following proposition:

If the court, on the application to confirm the original assessment, had jurisdiction to *consider* the ordinance in that case, or the power to enter upon the subject at all, then its adjudication was not void. If it had no power to consider the petition in that case, or to determine whether the ordinance was good or bad, then its adjudication was void.

> "They (the authorities) all agree that enough must appear either in the application or the order, or at least somewhere upon the face of the proceeding, to call upon the court to proceed to act; and all agree that when that does appear, then the court had properly acquired jurisdiction, or, in other words, is properly set to work. When the jurisdiction is thus established, and the court is authorized to hear, it follows as necessary consequence that it is authorized to adjudge, and that judgment being thus entered by authority of law, no matter how erroneous it may be, or even absurd—though it be made in palpable violation of the law itself, and manifestly against the evidence—is, nevertheless, binding upon all whom the law says shall be bound by it that is upon all parties and privies to it, until it is reversed in a regular proceeding for that purpose. While it remains a judgment it cannot be inquired into—nor its regularity questioned in any collateral proceeding"

Young v. *Lorain*, 11 Ill., 637.

> "The rule is that enough must appear either in the application or the order, or at least somewhere upon the face of the proceedings, to call upon the court to proceed to act, and when that does appear, then the court has properly acquired jurisdiction."

Mulford v. *Stalzenback*, 46 Ill., 307.

> "When such an application was presented as required him (the judge) to act, then he acquired jurisdiction over the subject. He was then properly set to work. When jurisdiction is once shown to have attached, his authority to act was as complete as is the authority of the Circuit Court in any matter of which it has jurisdiction."

Galena & C. U. R. R. Co. v. *Pound*, 22 Ill., 414.

See, also,

Fitzgibbon v. *Lake*, 29 Ill., 177.

Reid v. *Morton*, 119 Ill., 131.

The foregoing doctrine as to what constitutes jurisdiction, applicable as well in special assessment cases as in others, is established in Illinois, and not disputed. In the present case it is not denied that all the elements of a sufficient petition for a special assessment were contained in that presented to the court in 1893 *except one.* The statute required the petition to "recite the ordinance." It did recite that of March 28th, 1893. If that ordinance *had any validity whatever,* so as to permit the court to enter upon a consideration of petitioner's rights under it, manifestly the order entered thereon would not be void, however erroneous.

Inasmuch as the statutes of Illinois have always authorized the levy of a special assessment in one installment, even in cases where it might, at the option of the municipality, have been divided into many, the provision of Section 1 of the ordinance of March 28th, 1893, would have conferred jurisdiction upon the County Court to consider the petition, *if that section also had not been void.*

Keeler v. *The People,* 160 Ill., 179.

In that case the ordinance did not provide for a division of the assessment into installments, but the judgment separated it into five equal parts, and also made confirmation of the total. This was held the equivalent of a judgment in a single installment; the attempted division being incomplete as not specifying when the installments were payable, and being disregarded. If, in the present case, the provision *for installments only* was void, then there remained a provision in the ordinance for *one* installment, as in the Keeler case. Even more clearly, for in this ordinance the second section only contained the

provision dividing the total into installments, and if, as is now claimed, this was the only defect, section one would have been sufficient to sustain the court's jurisdiction. There was in this case an order confirming the total, as in the Keeler case.

In *Clark* v. *People,* 146 Ill., 350, it was said:

> "It is the general rule that where the court has jurisdiction of the parties and subject-matter in a particular case, its judgment * * * is conclusive, and is not open to collateral impeachment by the parties thereto, or their privies. * * * This rule has been applied by this court to judgments confirming special assessments so frequently that it is unnecessary for us to do more than cite the cases where such application has been made." (Citing eleven cases.)

The result is that the Culver case could not have been so decided if the first section of the ordinance of March 28, 1893, had not been void, as well as the second. By that decision the first section falls with the second.

The necessary effect, therefore, of the decision of the Supreme Court of Illinois in *Culver* v. *The People,* was to wipe out and extinguish every provision of the ordinance of March 28th, 1893, for the levying of *any* special assessment or special tax. If there was anything left of it whatever, as a basis for a charge upon private property, the decision of *Culver* v. *The People* could not have been rendered.

This was the doctrine held by the Illinois Court in *O'Neil* v. *People,* 166 Ill., 565, where the court said, referring to the Culver case:

> "The rule is, that the ordinance can be attacked (on application for judgment) *on the ground it is void, but on this ground only,* for if the ordinance is void the court, in the assessment proceeding, had no jurisdiction, and all the proceedings based upon the ordinance are consequently void. Thus the question of the validity of the ordinance is a jurisdictional one, and may properly be raised in this proceeding."

The Culver case became the law of the State of Illinois, as the consideration of that ordinance was specifically before the court. And so the law stood when this proceeding was begun.

When, therefore, the new assessment against the property of these plaintiffs in error was levied, in 1896, after the work had been completed, under a new ordinance providing for a special assessment, the situation was precisely one which, by the frequent decisions of the Supreme Court of that state, neither created nor permitted any charge against private property.

East St. Louis v. *Albrecht*, 150 Ill., 506.
Weld v. *People*, 149 Ill., 258.

Under those conditions, if the settled and established law of Illinois had been applied to the case of these plaintiffs in error no such charge against their property could have been sustained. The motion of plaintiffs in error to dismiss the proceedings should have been allowed.

IX.

THE ILLINOIS COURTS APPLIED TO PLAINTIFFS IN ERROR AND THEIR PREMISES A RULE THE EFFECT OF WHICH WAS TO CHARGE THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

We are complaining, in the present proceeding, that the law of Illinois *was not applied* to the case of these plaintiffs in error, but that their property is sought to be charged in the present proceeding to this large extent *contrary to law*, and without right, by the constituted authorities of the State of Illinois; and that this contravenes the fourteenth amendment of the constitution of the United States.

It is established in this court that the provisions of the 14th amendment to the constitution are a guaranty, not merely against a *statute* of a state in contravention thereof, but against a misapplication, *by the courts of any state,* of the local laws, although on their face not unjust or unreasonable, so as to produce the same oppressive effect as if done by statute.

As we understand the rule, if the judicial authorities of the state deny any litigant the equal protection of the laws, or by judgments charge him or his property, without due process of law, it is as much the act of the state as if done by the legislature.

C., B. & Q. R. R. Co. v. *City of Chicago,* 166 U. S., 228.

Backus v. *Fort. St. U. D. Co.,* 169 U. S., 559.

Costillo v. *McConnico,* 168 U. S., 674.

Williams v. *Mississippi,* 170 U. S., 213, 224.

Neal v. *Delaware,* 103 U. S., 370, 394.

Exparte Virginia, 100 U. S., 339, 347.

Henderson v. *Mayor of N. Y.,* 92 U. S., 259, 268.

Guthrie on 14th Amend., 45.

The present is a case by which the property of the plaintiffs in error is charged with a large public obligation by a whip-sawing process which can only be defended, if at all, by separating the questions into single propositions and considering each separately, as if independent, and then combining the results; the effect of which, in the present case, is as oppressive as if the rights of plaintiff in error had been denied by statute.

The fundamental law of Illinois, as construed by its courts, denies public corporations any right to levy a

special assessment to pay for a local improvement *after it is made*. This we have shown above, and this proposition, we apprehend, is undisputed.

East St. Louis v. *Albrecht*, 150 Ill., 506.
City of Carlisle v. *County of Clinton*, 140 Ill., 512.
Weld v. *People*, 149 Ill., 258.

The question before the trial court and the Supreme Court of Illinois was, on this point, whether or not the ordinance of March 28, 1893, which was the only prior authority for making the said improvement, contained valid provision for *any* special assessment; it was the contention of the plaintiffs in error that it did not, and, if not, the *whole assessment* was without lawful authority and void.

In the alternative, it was contended by plaintiffs in error that if the said original ordinance *did* contain a valid provision for *any* special assessment, then the County Court, on the application to confirm the assessment made under it, was not without jurisdiction, and its judgment reducing the assessment upon the lands of plaintiffs in error, and confirming it as reduced, upon their objections, was a final adjudication of the amount due from their property for that improvement, and in a subsequent proceeding the court had no power to charge more than that sum to any of the parcels affected.

A prior adjudication reducing an assessment is a bar to an effort to charge the land further for the same improvement.

Greeley v. *Town of Cicero*, 148 Ill., p. 632.

Plaintiffs in error insisted in the courts of Illinois that they were entitled to the benefit of one or the other of these propositions, viz.:

Either the ordinance of March 28, 1893, as to its provision for a special assessment, was *void,* in which case the whole assessment was unlawful; or it was *not* void, in which case the County Court had jurisdiction to entertain the petition under it, and its adjudication was valid. In other words, we should either not be charged at all or only half the present amount.

But the Supreme Court of Illinois decided that said original ordinance was *void,* so that the County Court had no jurisdiction to entertain or consider a petition based upon it, and also that it was *valid,* so as to provide sufficiently for a special assessment, and to justify a new proceeding to charge the property after the work had been done.

In other words, in order to charge the lands of plaintiffs in error, whether or no, it was held that the original ordinance was valid, and also that it was void, a proposition so manifestly unjustifiable as to clearly come short of "due process of law."

If a statute of Illinois had provided that an ordinance for an assessment, in a form like the present, should be deemed void, so as to confer no jurisdiction on a court to consider it, and also should be deemed valid, so as to authorize a subsequent assessment for an improvement already made, it would be perfectly apparent that, however intended, it would operate as a trap to catch a property owner coming or going. Precisely such was the effect of the court's rulings in the present case.

Under this head it is our contention that the judgment

of the Supreme Court of Illinois imposed upon the plaintiffs in error this heavy burden contrary to the provisions of the 14th amendment, in the manner aforesaid.

X.

IF THE ORDINANCE OF MARCH 28TH, 1893, WAS NOT VOID, THEN THE JUDGMENT OF JULY 8TH, 1893, WAS VALID, AND CONCLUSIVE OF THE BENEFITS TO THE PROPERTY IN QUESTION.

If the ordinance of March 28th, 1893, had any validity whatever, as a provision for any special assessment or special tax, the adjudication of the County Court in the proceeding to confirm settled the rights of these plaintiffs in error, and should have been held conclusive in the subsequent proceeding.

In the present case, it having been held that notwithstanding the Culver case the ordinance of March 28th, 1893, contained a sufficient provision for a special assessment to charge the land of plaintiffs in error with a liability for the improvement, we asserted that in such case the County Court was not without jurisdiction in the confirmation proceeding, and its judgment was valid. The County Court had in 1893 reduced the assessment of these plaintiffs in error, and confirmed the same at an amount one-half of the present assessment, or thereabouts. Our motion to strike out from the present assessment roll all the excess over that sum was denied, and this has been sustained on appeal.

The Supreme Court has therefore held that the ordinance was valid enough to charge the property of plaintiffs in error, but not valid enough to confer jurisdiction on the County Court.

The effect of a judgment of a court of record is a question of general law, not peculiar to Illinois, and does not arise on its statutes or constitution. An adjudication of a court of record *having jurisdiction* is binding everywhere, and the question is presented to this court whether the refusal of a state court to respect such an adjudication, the result of which is to charge the property of a litigant for a public improvement, or increase such a charge, is not in contravention of the fourteenth amendment of the constitution of the United States. We contend that it is.

Considering the two questions decided by the state court together, as under our last heading, the federal question is, whether the use of one to head off a defense under the other is not denying a citizen his "due process of law." And, to determine this, the court will not assume that the decision of the two several questions involved was correct, even if, in their nature, both local. Nor, in considering them separately, is there any such presumption where the contention is that the local law was misapplied.

Guthrie, in his work on the 14th Amendment, page 45, says:

> "The rule as to accepting the interpretation of the state court is not universal. It does not strictly apply to the effect and operation of state statutes. The Supreme Court may decline to concur in the view of the state court as to the real effect and operation of a state statute or ordinance, and its necessary tendency."

And he cites on this point:

Soon Hing v. *Crowley,* 113 U. S., 703, 710.
Yick Wo v. *Hopkins,* 118 U. S., 356, 366.
R. R. and Telephone Cos. v. *Board of Equalizers,* 85 Fed. Rep., 302, 317.

The same author, on page 73, says:

"Ordinarily the Supreme Court will not attempt to review and correct the errors of state tribunals in the general administration of the local laws; but if a law or ordinance be systematically administered so as to violate the Fourteenth Amendment the court will interfere;" citing

Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 273.
Chy Lung v. *Freeman*, 92 U. S., 275, 279.
Neal v. *Delaware*, 103 U. S., 370.
Soon Hing v. *Crowley*, 113 U. S., 703, 710.
Arrowsmith v. *Harmoning*, 118 U. S., 194, 196.
Yick Wo v. *Hopkins*, 118 U. S., 356, 373.
Williams v. *Mississippi*, 170 U. S., 213, 225.

These then are, thus far,

THE FEDERAL QUESTIONS.

1. The courts of Illinois, having held that the ordinance of March 28, 1893, *was void*, so as to confer on the County Court no power to consider an assessment levied under it, ought to have held accordingly that the present proceeding was invalid. Their refusal to do so had the effect to charge this property without due process of law.

2. Construing that ordinance as having *any* validity, they should have sustained the prior judgment of the County Court, based upon it, and the refusal to do so denied plaintiffs in error due process of law.

3. To decide the above questions both ways in the same case, and thus sustain this charge against plaintiff's lands, is not due process of law, and amounts to a denial of federal rights.

The first of the questions so involved, viz.: the validity of the ordinance, was originally local, and this court will follow on that point the decisions of the local courts, as they were when the question arose, but will not permit them to refuse a citizen the benefit of the law, thus ascertained.

See *Thompson* v. *Perrine*, 103 U. S., 816,

where this court refused to follow the latest decision of the State Court, departing from its former rulings after the rights of the parties arose.

In *Anderson* v. *Santa Anna*, 116 U. S., 361, on a case where the Supreme Court of Illinois had departed from a line of decisions after the question at issue arose, this court said:

> "If, according to the law of Illinois, as declared by its highest court at the time the bonds in suit were issued, the act of February 28, 1867, was a valid exercise of legislative powers, the rights of purchasers or holders could not be affected by a subsequent change of decision."

The same doctrine was applied to previous statutes as construed by the local courts at the time the right (or conversely the demand) arose in *Douglass* v. *County of Pike*, 101 U. S., 677, cited in the Santa Anna case.

The second and third of said questions are not of local law, or only partially so; but if they were wholly so, this court would still inquire whether the decision on these points was a departure from the rules which prevailed when these proceedings were begun: and also whether they were a fair application to this case of the local laws as usually construed.

The most vital principle in each of these propositions, as federal questions, is the *misapplication* by the state court of its established rules of law, or its departure from

principles theretofore settled, so as to deny the benefits thereof to plaintiffs in error as effectively as if it was done by command of the legislature.

The decision complained of is also in conflict with the first clause of the fourteenth amendment, in that it discriminates against the litigants in this case, and denies them rights which are conceded to litigants in general.

XI.

IF THE PARK ACT OF 1895 IS CONSTRUED TO BEAR UPON THIS CASE AT ALL IT IS IN CONFLICT WITH THE FOURTEENTH AMENDMENT.

The 20th section of the act of Illinois approved June 24th, 1895, in force July 1st, 1895, entitled "An Act to enable Park Commissioners or Park Authorities to make local improvements, and provide for the payment therefor," is the only statutory authority for a new proceeding to be begun and prosecuted after the improvement has been completed.

We quote from the said 20th section the following:

> "Where in any case such park board or park authorities, having authority to improve any street or streets, * * * said improvement shall have been made or partly completed and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment of said improvement by special assessment shall have failed, or been declared void by any court of competent jurisdiction, then, and in any such case, the said Park Commissioners or park authorities are hereby vested with power to levy, assess and collect a new special assessment on property benefited by said improvement, or completed portion thereof, in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvements, or the completed portion thereof, shall each severally be liable to pay for said benefits to the same extent and in the same proportion as in other cases. Provided, that the provisions and all proceedings in

> respect to such new assessments shall relate to and be in force in all cases in which at the time of the passage of this act work has been completed, or partially completed, under any special assessment proceedings, or attempted special proceedings heretofore levied or collected, or attempted to be levied and collected, by any such Board of Park Commissioners or park authorities." (Hurd's Statutes of Illinois, 1899, Chap. 105, Sec. 20, page 1244.)

It is recited in the petition for the present improvement that the new ordinance, which is the basis of the present proceeding, rests upon the authority of the above section. It is recited also that the previous proceedings had been "declared void by a court of competent jurisdiction," and set aside by order of court. (Pr. Rec., 50, 51.)

Prior to the passage of said act, in 1895, *after said work had been completed,* there was no statute which authorized a new assessment for such an improvement, under these conditions. The "city and village act" then in force contained such a provision, but had no application to parks or park boards, or town authorities. The main ground of the decision in *Culver* v. *The People,* 161 Ill., 89, was that the provision of the city and village act authorizing a division of assessments into installments had no application to assessments by park boards.

Such then was the condition on July 1st, 1895, that a previous proceeding to charge this property for the said improvement had been "declared void"; that the work had been completed; that no law existed under which a new assessment could be made. Thereupon the legislature passed the law in question, assuming to create a right to charge the property of plaintiffs in error for previous work.

The provision of this act of 1895 authorizing an assessment for work previously done was, we submit, contrary

to the fourteenth amendment. We have seen that by the constitution and laws of Illinois property could not be charged except in pursuance of a right which existed *before the work was done.*

It is contended that this act is valid in this respect because the ordinance of March 28th, 1893, "created a liability" against this property for the cost of said improvement, and that the statute, although subsequent, merely provided means for enforcing that obligation. This we submit is not the case, even if it be assumed that the original ordinance contained a valid provision for an assessment. *The liability of the property* is not created by the *mere* existence of the prior ordinance. There must be at the time a statute to make it effective. It is by virtue of the *statute,* and not the ordinance, that the right exists. An ordinance, though purporting to create such a charge, but with no statute to authorize it, and no person or court provided to decree or enforce it, would be altogether ineffectual. No municipal act, done without statutory authority, can impose an obligation or duty.

Marsh v. *Chesnut,* 14 Ill., 223.
Billings v. *Detten,* 15 Ill., 218.
Conway v. *Cable,* 37 Ill., 82.
Anderson v. *Santa Anna,* 116 U. S., 360.

And no such void imposition could be made good afterward, so that a mere remedy provided later could vitalize it *ab initio.* The ordinance is only one step in a series of proceedings which must depend upon statutory authority, and the existence of the ordinance without the statute does not charge property, nor have any effect whatever thereon. Without the new power conferred by this act the Park Board could never have ac-

quired a right to sell the property of plaintiffs in error for this improvement, and this is an essential element of the obligation.

In Missouri a state of facts like the present arose. Proceedings were taken to levy a special assessment. Pursuant to this the work was done, and the contractor, according to the procedure in that state, undertook to collect the money, but the proceedings were found defective. Afterward the legislature, by a new statute, conferred power to make a re-assessment, which was done. In *City of St. Louis* v. *Clemens*, 52 Mo., 133, the validity of the new act was in question, and the court said:

> "The City of St. Louis, under the law as it stood when the contract was made and the work done for which the assessment was made for which this suit is brought, could only authorize the making of improvements of the kind in question so as to charge the adjoining property with the cost thereof by a compliance with the requirements of her charter. This was not done in this case, so that the doing of the work by the contractor created no obligation on the part of the appellant to pay therefor, nor did it create any lien on the property of the appellant to secure the payment of the cost of the work, nor did it create any right in favor of the contractor to demand or recover the same from either the defendant or his property, either in the name of the city for his use or otherwise. * * * Such right or liability was created for the first time by the act of 21st of March, 1870. *How then can we say that this act does not create a new right in favor of the contractor, and incur a new liability on the part of the defendant?*"

The same in substance was held by the Supreme Court of California in *Brady* v. *King*, 53 Cal., 44.

To illustrate the application of this doctrine to the present case,—

The present Park Board had, in 1893, power to charge private property with the cost of local improvements, not *generally*, but by following a de-

fined course, *i. e.,* levying by ordinance an assessment *in a single installment.* They assumed to levy one in a different manner, *i. e., by five installments;* and this was held to be so far beyond their power as to confer no jurisdiction on the County Court to act upon it at all. Their action was, therefore, as ineffectual as if they had assumed a power altogether denied them. When, then, the act of 1895 was passed, and their new ordinance adopted, this was not merely a form of *procedure.* The *effect* of their act altogether depends on it.

That it is the *statute,* and not the ordinance, with no law to enforce it, which creates a charge on private property, is amply established by the decision of the Supreme Court of Illinois in *Weld* v. *People,* 149 Ill., 258, which was a proceeding to levy a special tax on private property for a sidewalk. There had been an adequate ordinance for the work, the only defect of which was that it had not been posted, as required by law. Under it the work was done, and a special tax levied, which failed for that reason. A new ordinance was then passed and duly posted under which a new special tax was levied. This was held to be unauthorized because no valid ordinance existed *when the work was done.*

If the prior ordinance *created the liability,* that assessment ought to have been sustained, for an effort was made in advance to charge the property, which is all that can correctly be said in the present case. If afterwards a law were passed to authorize a levy for that work, manifestly the right to charge the property *would arise at the same time.* Such a statute, like that relied on in the pres-

ent case, would not merely relate to the remedy, but would, if effective at all, inject, *as of the time of its passage,* new validity and life into an inadequate ordinance.

Although the act of 1895 does not in terms purport to *cure* the defects of this proceeding, or any previous proceeding, yet in so far as it authorizes a new assessment after the work has been done, where the original ordinance "has been declared void by a court of competent jurisdiction," such was its intention; and manifestly it was so treated in the present case, for it is on the express assumption that the ordinance of March 28th, 1893, "had been declared *void*" that the new proceedings under this act were instituted. The act provides, (Section 20), "Where, in any case such park board or park authorities having authority to improve any street or streets or parts thereof, and to pay for the improvement thereof by special assessment, and said improvement shall have been made or partly completed, and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment for said improvement by special assessment shall have *failed or been declared void* by any court of competent jurisdiction, then, and in any such case, the said park commissioners or park authorities are hereby vested with power," etc., etc.

The preamble of the ordinance of July 14th, 1896, is in part as follows:

> "Whereas, the said special assessment proceedings in said County Court above mentioned, *and the provisions of said ordinance* for the payment of said improvement, *have been* heretofore, and on the 28th day of March, A. D. 1896, *declared void by the Supreme Court of Illinois*, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed," etc., etc.

It is therefore upon the theory that the ordinance of 1893 had been declared *void* by the Supreme Court of Illinois, and that the work therein contemplated had been already done and completed, that the provisions of the act of 1895 were invoked; and all the subsequent proceedings were conducted thereunder.

Our proposition on this point is, that if the said provision of the act of 1895 conferred any authority whatever in the present case, it was by virtue of its effect as a curative act, and not otherwise. If that act did not cure the defect in the ordinance of March 28th, 1893, then it was never cured, and the act of 1895 could not, under the constitution of Illinois as construed by its courts, justify any assessment for the work previously completed.

See the cases above cited, and also *Pells* v. *City of Paxton*, 176 Ill., 318, from which we quote the following:

> "A city council has no right to make an improvement and then, after the improvement is made, pass an ordinance providing for the making of the improvement. The passage of the ordinance must precede the making of the improvement, *and the making of the improvement and all steps thereafter are absolutely void unless preceded by a valid ordinance.*" (P. 326.)

But we contend:

1. That the defects in the first ordinance were incapable of being cured by a retroactive law, for the legislature had no power to dispense with the vital requirement that a valid ordinance should be the first step, and no retroactive statute can cure omissions which it could not have authorized.

From Cooley on Taxation we quote:

> "One very precise limit to the power to cure these proceedings is this: They cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every

species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all.

* * * * *

"It is certain that whatever the legislature could not have authorized originally it cannot confirm. The unauthorized acts of individuals cannot confer upon the state a power it did not before possess. Therefore no unconstitutional tax can be confirmed, and none that entirely wants any essential element of taxation." (P. 227.)

From Cooley on Constitutional Limitations, (2d Ed., bottom page 407), we quote:

"The rule applicable to cases of this description is substantially the following: If the thing wanting, or which failed to be done, and which constitutes the defect in the proceedings, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law."

From the same volume (bottom page 420):

"But the healing statute must in all cases be confined to validating acts which the legislature might previously have authorized. It cannot make good retrospectively acts or contracts which it had no power to permit or sanction in advance."

From the same volume (bottom page 421):

"But if township officers should assume to do acts under the power of taxation which could not lawfully be justified as an exercise of that power, no subsequent legislation could make them good."

The foregoing rule is well established in this court.

Anderson v. *Santa Anna,* 116 U. S., at pp. 364-365.

St. Joseph Township v. *Rogers,* 16 Wallace (U. S.), at p. 663.

Thomson v. *Lee County,* 3 Wallace (U. S.), at p. 331.

See also,

Folsom v. *Township of Ninety-six,* 59 Fed. Rep., at p. 69.

In Illinois practically the same thing has been held. See *Marsh* v. *Chesnut,* 14 Ill., 223. It was held that a judgment for taxes could not be validated by a subsequent law, where the assessment had not been returned and completed as required by the statute. The same thing was also held in *Billings* v. *Detten,* 15 Ill., 218; *Conway* v. *Cable,* 37 Ill., 82. In the case last cited, the court said that a statute purporting to validate a void tax sale was void as depriving a person of property without due process of law

Since by the constitution of Illinois a *previous* valid ordinance, providing for the assessment, is *essential* to charge private property, and this by the terms of the later ordinance in this case is admitted to have been void, the act of 1895 either did not apply to it at all, or did not effectually aid it.

2. The present is not like those cases in which an equivalent has been received, and a moral obligation exists to make recompense, which in some cases may be enforced by subsequent legislation.

In *New Orleans* v. *Clark,* 95 U. S., 650, this court held that the legislature might, by a new act, (not forbidden by the state constitution), require a city to levy a tax for the payment of bonds, the equivalent of which it had received; but said in the same connection:

> "A very different question would be presented, if the attempt were made to apply the means raised to the payment of claims for which no consideration had been received by the city." (P. 653.)

In the same case the court said:

> "Equitable claims which had existed against the dissolved city would continue as before, and be equally subject to legislative recognition and enforcement, or their payment might be required, as in this case, by the act of annexation."

These plaintiffs in error have received nothing from the park board. It may be assumed that their property is to a degree enhanced in value by the improvement made, but manifestly this is not the kind of a moral obligation which the court considers to justify retroactive statutes. Every public improvement to some degree enhances the value of private property in its vicinity. It is this which little by little adds increment to the value of all city property. Every public highway laid out and paid for or improved by general tax has the same effect. Nearly the entire South Park boulevard system was created and paid for by general tax, but this created no obligation upon the property owner abutting upon it, either legal or moral, to pay for it. The Illinois constitution expressly so provides, as we have seen. The charge upon private property is technical only. Every act of a neighboring private owner which improves property in his vicinity would create the same kind of an obligation.

This was held by the Supreme Court of Missouri not to be the equitable obligation which alone can justify a retrospective statute to enforce it; and it was also held that the rules above cited relating to general taxes had no application.

City of St. Louis v. *Clemens*, 52 Mo., 143.

This element, therefore, may be disregarded.

3. The act of 1895 is not retroactive in any event, so as to make any of the proceedings good *from the begin-*

ning. If it cures any of these defects at all, it does so only *from the date it took effect,* and this would leave the constitutional requirement of a valid *pre-existing* ordinance still lacking.

In *Spencer* v. *Merchant,* 125 U. S., 351, this court held that a statute passed in 1881 to rectify errors in a previous assessment levied under an act of 1869 justified and authorized a new and independent assessment only, and thus became effective only from its date. On this ground alone that proceeding was supported; and it was because of an opinion to the contrary on that subject that two of the judges of this court dissented.

Such was also the decision in the case of *Jones* v. *Tonawanda,* (N. Y. Ct. of Appeals), 53 N. E. Rep., 280.

And in *New Orleans* v. *Clark,* 95 U. S., 655, this court held that the statute requiring a tax to be levied for the payment of a pre-existing obligation, for an equivalent already received, "is not a retroactive law—no more so than an appropriation act providing for the payment of a pre-existing claim."

And the court in the same case said:

> "The constitutional inhibition (forbidding the passage of retroactive statutes) does not apply to legislation recognizing or affirming the binding obligation of the State, or of any of its subordinate agencies, with respect to past transactions. It is designed to prevent retrospective legislation injuriously affecting individuals, and thus protect vested rights from invasion."

XII.

SUMMARY.

1st. As the court will see, this is a hard case. The controversy arises out of an effort to compel a ribbon of land 125 feet wide, along the margin of a boulevard 250 feet in width, decorated and ornamented as a park, to pay the entire cost of its improvement, although it is made for the general benefit of the inhabitants.

2nd. The original ordinance for the improvement was declared by the Supreme Court, in a direct proceeding, to be *void*, and so utterly without effect as to form no basis for an adjudication thereon by the County Court.

3rd. The constitution and laws of the state, as uniformly construed, permit no such charge to be created against private property without a previous valid ordinance providing that the cost be paid by special assessment or special tax.

4th. The previous assessment having been extinguished completely by the decision of the Supreme Court, there remained no authority of law to charge this property. The legislature thereupon passed a law, after the work had been completed, providing that, notwithstanding the said provisions of the constitution of the state, the work previously completed *might* be charged upon the private property by a procedure therein for the first time provided.

5th. On the application for such an assessment the property owners protested, setting up the provisions of the constitution of the United States in denial of the right.

6th. The courts of the state, although they had held the original ordinance *void,* so as to confer no jurisdiction on the courts even to consider it, held that it was *valid* for the purpose of creating a charge on property of plaintiffs in error.

7th. If the ordinance was in fact valid, then the original judgment of confirmation, reducing this assessment, was valid and effectual, and should have been applied here.

8th. By the whip-sawing process we have referred to the courts of the state have held that the ordinance of March 28th, 1893, was *void,* so as to deprive plaintiffs in error of the benefits of its adjudication reducing the amount of their assessment; but *valid* for the purpose of creating a charge upon their property.

Against this act of judicial discrimination we protest, and appeal to this court for relief, believing that the judgment ought to be reversed.

Respectfully submitted.

JOHN P. WILSON,
WILLIAM B. MCILVAINE,
Counsel for Plaintiffs in Error.

ADDITIONAL ASSIGNMENTS OF ERRORS.

10. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and of each of them, and inasmuch as the said judgment of confirmation denied plaintiffs in error severally the right to hold their property free from any charge for a public improvement, not made in pursuance of a previously existing valid ordinance, as required by the constitution and laws of the State of Illinois, the judgment of the Supreme Court affirming the said order of confirmation denied plaintiffs in error rights guaranteed to them under the Fourteenth Amendment to the Constitution of the United States.

11. The County Court of Cook County should have dismissed the petition for confirmation of the said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient, under the constitution and laws of the State of Illinois, to support the said assessment, lacking the preceding valid ordinance required thereby; and also on the further ground that in view of the evidence before the court the said ordinance and other proceedings appeared to be insufficient in law; and the said Supreme Court erred in sustaining said refusal and in holding that the same was correct; and since it appeared upon said trial that the original ordinance for said improvement was invalid, the failure of said trial court to dismiss said petition on said motion, and the affirmance of said decision by the Supreme Court of Illinois, amounted to the imposition of a burden on the property of the plaintiffs in error, without due process of law;

and also to a denial to said plaintiffs in error of the equal protection of the laws.

12. The court erred in holding that the County Court of Cook County had jurisdiction to confirm the assessment appealed from upon the property of the plaintiffs in error and each of them; such judgment imposing said charge on the property of said plaintiffs in error, without having jurisdiction under the laws and constitution of the State of Illinois, lacking a preceding valid ordinance for an assessment therein; and the affirmance of said judgment by the Supreme Court of Illinois, amounted to the imposition of a charge on the property of the plaintiffs in error, without due process of law, and also to a denial of the equal protection of the laws, all in contravention of the Fourteenth Amendment to the Constitution of the United States.

13. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by the ordinance and proceeding shown in the record, originating after the work was done, the original ordinance for the assessment having been void; and inasmuch as the constitution of Illinois forbids such a charge, under such conditions, the said judgment, and the affirmance thereof by the Supreme Court of Illinois, imposed a charge upon the property of plaintiffs in error contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

14. The State court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, departed from the requirements of the State laws and constitution in holding that said ordinance

was sufficient to support a proceeding after the work was done based on the new ordinance, passed after completion of the work; said judgment of the trial court had the effect to deny to plaintiffs in error, and each of them, the right to hold their property free from public charges or burdens, except such as are imposed pursuant to the statutes and constitution of the State of Illinois; and amounted to a charge thereon without any authority of law, and therefore denied to the plaintiffs in error, and each of them, the right to due process of law, and to the equal protection of the laws, guaranteed them by the Fourteenth Amendment to the Constitution of the United States.

15. If the court was right in holding that the provision in the ordinance of March, 1893, for a special assessment to pay for said improvement had any validity, then the court should not have denied plaintiffs in error the benefit of the judgment of the June term, 1893, confirming the assessment then before the court; and said judgment of the trial court had the effect to deny to the plaintiffs in error, and each of them, the right to hold their property free from public charges or burdens except such as are imposed pursuant to the statutes and constitution of the State of Illinois; and amounted to a charge thereon of said excess without any authority of law, and therefore denied to the plaintiffs in error, and each of them, the right to due process of law, and the right to the equal protection of the laws, guaranteed them by the Fourteenth Amendment to the Constitution of the United States.

16. As to plaintiff in error Lombard, the court erred in denying him the benefit of his contract with the de-

fendants in error fixing the amount of the assessment on his property, and in refusing to enforce the said contract; the said courts, and each of them, denied said plaintiff in error Lombard the equal protection of the laws, and denied him due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

17. The court erred in holding, in the present case, contrary to the established laws of Illinois, that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from, and thereby the State court sought to charge the property of the plaintiffs in error, and each of them, with the public burden in question, without authority of law, and without any statute therefor, except the act approved June 24, A. D. 1895, in force July 1, 1895, purporting to authorize the same, which law was without force or effect for that purpose; and thereby the said courts denied plaintiffs in error, and each of them, the right to the equal protection of the law; and also denied to them severally due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

18. That by the record aforesaid it appears that the judgment aforesaid was given for the said West Chicago Park Commissioners against the said J. L. Lombard *et al.*, whereas by the law of the land the said judgment ought to have been given for the said J. L. Lombard *et al.*, against the said West Chicago Park Commissioners. The constitution and laws of the State of Illinois which were applicable to the case of the plaintiffs in error here were not applied to the present case, either by the trial court or by the Supreme Court of Illinois, but the burden of the

charge complained of was made upon them without any authority of law and without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

19. The State court should not have held the ordinance of March, 1893, valid and sufficient to support the assessment in question, levied after the work had been completed, and at the same time have held the same ordinance invalid and insufficient to support the judgment of the March term, 1893, of the County Court of Cook County, reducing the assessment of plaintiffs in error. The said contradictory decision had the effect to deny these plaintiffs in error, and each of them, due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and also to deny to them the equal protection of the law.

20. By the settled law of Illinois and the established construction of its constitution, the ordinance of March, 1893, was absolutely void at the time the present cause of action arose. The courts of the State of Illinois departed from the settled law of that State in the present case, and attempted to enforce the present charge on the property of plaintiffs in error, contrary thereto, all of which was in contravention of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted.

JOHN P. WILSON,
WILLIAM B. MCILVAINE,
Counsel for Plaintiffs in Error.

No. 160.

Brf. of Wilson & McIlvaine for P. E.

Office Supreme Court U.S.
FILED
JAN 29 1901
JAMES H. MCKENNEY,
Clerk.

Filed Jan. 29, 1901.

IN THE

Supreme Court of the United States.

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Defendant in Error.

Error to the Supreme Court of the State of Illinois.

REPLY OF PLAINTIFFS IN ERROR TO THE ARGUMENT OF COUNSEL FOR THE DEFENDANT IN ERROR.

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HARRARD & MILLER PRINT, CHICAGO.

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The questions involved in the present appeal are sufficiently discussed in the brief heretofore filed, and we need add nothing thereto by way of argument. It is objected, however, by counsel for defendant in error that the assignments of error are inadequate in this respect, that they do not specifically refer to the Constitution of the United States, or the Fourteenth Amendment thereto.

We respectfully submit that this is not necessary, and none of the authorities cited by counsel are to that effect, or bear in the remotest way upon the question. There is no statute and no rule of court supporting their proposition.

We contend that by the objections filed and assignments of error appearing in the record in the *State Courts,* this

court can see that plaintiffs in error relied *in that court* upon the Constitution of the United States, and that the right which they claimed thereunder was denied them by the State Court. The Federal question is then raised, and is before this court for decision. It would not be raised any more effectually by referring to it in terms as contravening the Constitution of the United States. By the assignment of errors here this court considers the federal question only. If the errors assigned in this court relate only to such questions, they are, we submit, adequate, although the Constitution is not mentioned therein.

Nevertheless we concede it to be proper, where objections are made which are capable of being removed, to remove them, and we therefore applied in this court for leave to supplement the assignment of errors already on file, by appropriate designation of the manner in which the Fourteenth Amendment to the Constitution of the United States applies, and submit below the said additional or supplemental assignments of error, as thus modified.

They are as follows:

ADDITIONAL ASSIGNMENTS OF ERRORS.

10. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and of each of them, and inasmuch as the said judgment of confirmation denied plaintiffs in error severally the right to hold their property free from any charge for a public improvement, not made in pursuance of a previously existing valid ordinance, as required by the constitution and laws of the State of Illinois, the judgment of the Supreme

Court affirming the said order of confirmation denied plaintiffs in error rights guaranteed to them under the Fourteenth Amendment to the Constitution of the United States.

11. The County Court of Cook County should have dismissed the petition for confirmation of the said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient, under the constitution and laws of the State of Illinois, to support the said assessment, lacking the preceding valid ordinance required thereby; and also on the further ground that in view of the evidence before the court the said ordinance and other proceedings appeared to be insufficient in law; and the said Supreme Court erred in sustaining said refusal and in holding that the same was correct; and since it appeared upon said trial that the original ordinance for said improvement was invalid, the failure of said trial court to dismiss said petition on said motion, and the affirmance of said decision by the Supreme Court of Illinois, amounted to the imposition of a burden on the property of the plaintiffs in error, without due process of law; and also to a denial to said plaintiffs in error of the equal protection of the laws.

12. The court erred in holding that the County Court of Cook County had jurisdiction to confirm the assessment appealed from upon the property of the plaintiffs in error and each of them; such judgment imposing said charge on the property of said plaintiffs in error, without having jurisdiction under the laws and constitution of the State of Illinois, lacking a preceding valid ordinance for an assessment therein; and the affirmance of said judgment by the Supreme Court of Illinois, amounted to the impo-

sition of a charge on the property of the plaintiffs in error, without due process of law, and also to a denial of the equal protection of the laws, all in contravention of the Fourteenth Amendment to the Constitution of the United States.

13. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by the ordinance and proceeding shown in the record, originating after the work was done, the original ordinance for the assessment having been void; and inasmuch as the constitution of Illinois forbids such a charge, under such conditions, the said judgment, and the affirmance thereof by the Supreme Court of Illinois, imposed a charge upon the property of plaintiffs in error contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

14. The State court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, departed from the requirements of the State laws and constitution in holding that said ordinance was sufficient to support a proceeding after the work was done based on the new ordinance, passed after completion of the work; said judgment of the trial court had the effect to deny to plaintiffs in error, and each of them, the right to hold their property free from public charges or burdens, except such as are imposed pursuant to the statutes and constitution of the State of Illinois; and amounted to a charge thereon without any authority of law, and therefore denied to the plaintiffs in error, and each of them, the right to due process of law, and to the equal protection of the laws, guaranteed them by the

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Fourteenth Amendment to the Constitution of the United States.

15. If the court was right in holding that the provision in the ordinance of March, 1893, for a special assessment to pay for said improvement had any validity, then the court should not have denied plaintiffs in error the benefit of the judgment of the June term, 1893, confirming the assessment then before the court; and said judgment of the trial court had the effect to deny to the plaintiffs in error, and each of them, the right to hold their property free from public charges or burdens except such as are imposed pursuant to the statutes and constitution of the State of Illinois; and amounted to a charge thereon of said excess without any authority of law, and therefore denied to the plaintiffs in error, and each of them, the right to due process of law, and the right to the equal protection of the laws, guaranteed them by the Fourteenth Amendment to the Constitution of the United States.

16. As to plaintiff in error Lombard, the court erred in denying him the benefit of his contract with the defendants in error fixing the amount of the assessment on his property, and in refusing to enforce the said contract; the said courts, and each of them, denied said plaintiff in error Lombard the equal protection of the laws, and denied him due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

17. The court erred in holding, in the present case, contrary to the established laws of Illinois, that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from, and thereby the State court sought to

charge the property of the plaintiffs in error, and each of them, with the public burden in question, without authority of law, and without any statute therefor, except the act approved June 24, A. D. 1895, in force July 1, 1895, purporting to authorize the same, which law was without force or effect for that purpose; and thereby the said courts denied plaintiffs in error, and each of them, the right to the equal protection of the law; and also denied to them severally due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

18. That by the record aforesaid it appears that the judgment aforesaid was given for the said West Chicago Park Commissioners against the said J. L. Lombard *et al.*, whereas by the law of the land the said judgment ought to have been given for the said J. L. Lombard *et al.*, against the said West Chicago Park Commissioners. The constitution and laws of the State of Illinois which were applicable to the case of the plaintiffs in error here were not applied to the present case, either by the trial court or by the Supreme Court of Illinois, but the burden of the charge complained of was made upon them without any authority of law and without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

19. The State court should not have held the ordinance of March, 1893, valid and sufficient to support the assessment in question, levied after the work had been completed, and at the same time have held the same ordinance invalid and insufficient to support the judgment of the March term, 1893, of the County Court of Cook County, reducing the assessment of plaintiffs in error.

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The said contradictory decision had the effect to deny these plaintiffs in error, and each of them, due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and also to deny to them the equal protection of the law.

20. By the settled law of Illinois and the established construction of its constitution, the ordinance of March, 1893, was absolutely void at the time the present cause of action arose. The courts of the State of Illinois departed from the settled law of that State in the present case, and attempted to enforce the present charge on the property of plaintiffs in error, contrary thereto, all of which was in contravention of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted.

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No. 160.

Bf. of Childs & Hudson for Pl.

Office Supreme Court U.S.
FILED
JAN 19 1901
JAMES H. McKENNEY,
Clerk.

Filed Jan. 19, 1901.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

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In Error to the Supreme Court of the State of Illinois

(17575.

BRIEF AND ARGUMENT OF COUNSEL FOR DEFENDANT IN ERROR.

ROBERT A. CHILDS,
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BARNARD & MILLER PRINT, CHICAGO.

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vs.
THE WEST CHICAGO PARK COMMISSIONERS, *Defendant in Error.*

In Error to the Supreme Court of the State of Illinois.

(17,575.)

Brief and Argument of Counsel for Defendant in Error.

STATEMENT.

FORM OF ACTION.

The West Chicago Park Commissioners, a municipal corporation, levied a special assessment on property benefited, for the cost of improving the boulevard connecting Garfield and Douglas Parks. The County Court of Cook County, Illinois, confirmed said assessment, the Supreme Court of Illinois affirmed that decision, and the present plaintiffs in error bring the case to this court upon a writ of error to said Supreme Court.

NATURE OF PLEADINGS.

The defendant in error, petitioner below, filed its petition in the County Court of Cook County, Illinois, August 28, 1896 (Printed Record, page 3), alleging that

it was the corporate authority for park purposes of the Town of West Chicago; that as such authority it had located a boulevard, prepared plans, specifications, and an estimate of the cost of improving said boulevard, to be paid for by special assessment, all in accordance with a petition addressed to said park commissioners, in writing, by the owners of a majority of the land fronting on said proposed improvement. (Printed Record, page 4.)

The petition further recites that the plans, specifications and estimate for improving said boulevard were, by ordinance duly passed, approved and adopted by the town of West Chicago, under the statute then in force; that said town authorities instituted proceedings in said County Court against the property to be benefited by the proposed improvement, for the spreading of such assessment; that commissioners were thereupon appointed by the court to prepare and file in said court their assessment roll, assessing said cost upon the property deemed to be benefited; and that the same was on the eighth day of July, 1893, after full hearing, confirmed by said court.

The petition further alleges that the Supreme Court of Illinois, afterwards, on writ of error, decided that the said assessment was improperly levied, because it was divided into several installments, whereas the park and town officers had, under the provisions of the statute then in force, no authority to make an assessment which should be payable in installments, their authority being limited to assessments payable in one sum; and that by reason of said decision the assessment proceeding had failed, and the petitioner was obliged to abandon the collection of said assessment so levied.

The petition then alleges that the mode of procedure

prescribed for the levying of such assessments had been changed in 1895 by an amendment to the statute, whereby the intervention of the "West Town Authorities" had been entirely dispensed with and eliminated, and the West Chicago Park Commissioners had been substituted in their place as the proper municipal officers to file in the County Court the petition for such assessment; that said park commissioners had made an estimate of the cost of said improvement, as required by law, and had, by ordinance duly passed, ordered "That a new special assessment on the property benefited by said improvement for the amount for which the same may be legally assessed, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, * * * all in accordance with an act of the General Assembly of the State of Illinois, approved June 24th, and in force July 1, 1895."

Wherefore said petitioner prayed "That the cost of said improvement may be assessed in the manner provided by law, and in accordance with said Act." (Pr. Rec., 8.)

Such assessment roll was prepared and filed.

Plaintiffs in error thereupon filed numerous objections, questioning the form of the proceedings and denying that their property was benefited to the amount of the assessment. (Pr. Rec., 8-11.)

Of these objections, five only raise or mention a "federal question," as follows (Pr. Rec., 26):

> "*First.* The said assessment and the proceeding to confirm the same is in violation of the 14th amendment to the Constitution of the United States, and especially that part of Section 1 thereof which is as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Second. The said assessment, and this proceeding to confirm the same is not authorized or justified by any valid *ordinance* for making the improvement in question and paying the cost thereof by special assessment which was passed or in existence prior to the actual making of said improvement, and therefore are not authorized by any law of the State of Illinois, and the imposition of the charge, or of any charge for that purpose would be without due process of law, and therefore contrary to the provisions of the 14th amendment to the Constitution of the United States.

Third. The ordinance for making the said improvement by special assessment upon private property was void and the said work was done without valid ordinance therefor. The present ordinance was levied for work already done. The said charge is therefore not authorized by any law and is in conflict with the guaranties contained in the 14th amendment to the Constitution of the United States, in this, that it would take the property of said objectors without due process of law, and that it would deny to the said objectors the equal protection of the laws.

Fourth. The only *statute* upon which the said proceeding and the said assessment are based was adopted in 1895, after the work for which the said assessment was levied had been completed. The imposition of the charge, therefore, would be contrary to the provisions of the 14th amendment to the Constitution of the United States, and would deprive the said objectors of their property without due process of law, and would deny to the said objectors the equal protection of the laws.

Fifth. The *statute* of 1895 upon which the pres-

ent assessment and proceeding are based is in conflict with the provisions of section 1, of the 14th amendment to the Constitution of the United States, and is therefore no sufficient authority for the imposition of the charge upon the property of said objectors.

The foregoing five objections are the only ones raising or mentioning any "federal question." They are four times employed, but the wording is the same in each instance.

The case was by stipulation submitted to be tried by the court without the intervention of a jury (Pr. Rec., 27), both on the "question of benefits" and on the "legal objections" as they are called in Illinois.

The County Court overruled all objections, finding that the lands of said objectors had not been assessed a greater amount than they would be benefited, nor an undue proportion of the total cost, and that the proceeding was not in contravention of the 14th amendment to the Constitution of the United States. (Pr. Rec., 32.)

The objectors appealed to the Illinois Supreme Court, and made the following assignments of error in which federal questions were mentioned. (Pr. Rec., 71-2.)

4. The court erred in ruling that said assessment and proceeding to confirm the same is not in violation of the 14th amendment to the Constitution of the United States.

5. The court erred in overruling the objection that there was no valid ordinance in existence authorizing said assessment and improvement at the time said improvement was actually completed, and that therefore said improvement and assessment were not authorized by any statute of the State of Illinois, and an imposition of a

charge for said improvement would be without process of law and in violation of the 14th amendment to the Constitution of the United States.

6. The court erred in overruling the objection that, as the present proceeding and assessment are based on a statute passed in 1895, after the improvement was actually completed, said proceeding and assessment are void as being in contravention of the 14th amendment to the Constitution of the United States.

7. The court erred in overruling the objection that the statute of 1895, upon which this proceeding and assessment are based, is in contravention of section 1 of the 14th amendment to the Constitution of the United States.

The Illinois Supreme Court affirmed the judgment. (Pr. Rec., 77.)

In this court the plaintiffs in error appear to have abandoned the "federal questions," for although they have filed nine assignments of error, in none of them is mention made of any infraction of the Constitution of the United States, of the fourteenth amendment, nor of any abridging of any privilege or immunity of the objectors, nor of depriving them of their property without due process of law, nor of denying them the equal protection of the laws. They all relate to matters of state law and state practice.

LEADING FACTS IN THE CASE.

The defendant, "The West Chicago Park Commissioners," is a municipal corporation organized for the improvement and management of public parks and boulevards in the town of West Chicago, being part of the

City of Chicago. By an act of the General Assembly of the State of Illinois, approved May 22, 1873, and in force July 1, 1873, appearing at 3 Starr & Curtiss Revised Statutes, Edition of 1896, pages 2862 to 2870, entitled "An Act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," provision was made for the completion and improvement of public parks and boulevards to be paid for by a special assessment upon the property to be benefited hereby. In accordance with the provisions of this act, the owners of a majority of the land fronting on Douglas boulevard, from Albany street westward and then northward to Garfield Park, in the city of Chicago, petitioned the West Chicago Park Commissioners to improve said boulevard, said improvement to be paid for by special assessment to be levied as provided in said act.

The park commissioners approved said petition, designated the line of said improvement, prepared plans, plats, specifications and estimates of the cost of such contemplated improvement and transmitted the same as required by section 3 of said act to the corporate authorities of said town of West Chicago. By section 3 of the act the supervisor, clerk and assessor were at that time the "town authorities" of said town. Upon the transmission and presentation of said plans, specifications and estimates the said corporate authorities on March 28, 1893, determined by ordinance duly adopted and passed by them that said improvement should be made and the expense thereof should be raised wholly by special assessment upon the property, lots and lands to be benefited thereby,

and on April 7, 1893, a petition was filed in the County Court of Cook, Illinois, for the purpose of properly spreading and levying such assessment.

By the said act of 1873, it was provided that "The proceedings to levy and collect such assessment subsequent to the filing of said petition, should, in all things as near as may be, conform to the provisions of 'an act to provide for the incorporation of cities and villages,'" being the act under which ordinary special assessments for the improvements of streets were then and still are levied and collected.

When this petition was filed, the County Court appointed commissioners to assess the benefits and return their assessment roll into court, which was accordingly done, and on the 12th day of May, and 8th day of July, 1893, orders were entered in said cause confirming said assessment roll.

At the time said assessment was levied the "Cities and Village Act" above referred to, provided that special assessments might be collected by installments, the right to make such division into installments having been conferred upon the city and village authorities by an amendment approved April 29, 1887, some fourteen years after the park board was authorized to adopt the provisions of said "City and Village Act" in the levying and collection of its assessments. When the first and second installments of this special assessment became due certain property owners refused to pay the assessment, their lands became delinquent, and application was made by the county collector for judgment and order of sale for the delinquent assessments, and such sale was ordered. From this judgment of sale Helen Culver, and after-

wards other objectors, took an appeal to the Supreme Court of Illinois, and assigned as error the division of said assessment into installments, contending that the "City and Village Act" *as adopted* for the west park assessments did not provide for the division into installments, but that said provision was added afterwards by amendment of 1887, which did not apply to the west park assessments. This case is reported in 161 Illinois, page 89, and the Illinois Supreme Court held that "the adoption by reference in the statute of 1873, of parts of the Cities and Village Act did *not* include the subsequent amendment to such Cities and Village Act, and that therefore the park authorities were without authority to divide their assessment into installments, and the assessment as levied was, therefore, void. Upon the announcement of this decision several writs of error were filed by numerous objectors, *Farrell et al.* v. *Town of West Chicago,* 162 Ill., page 280, *Connor et al.* v. *Town of West Chicago,* 162 Illnois, page 287, all resulting in reversing the order of confirmation of the assessment.

The work on the improvement had been commenced as soon as the original order of confirmation was entered, and the improvement had been completed before the error in dividing the assessment into installments was discovered. Meanwhile by a new statute of Illinois, passed in 1895, found in Starr & Curtis' Revised Statutes, page 2907, "the power to levy, assess and collect special assessments or special taxes on contiguous property, or general taxes, or both," for the purpose of improving boulevards, highways, or streets under their control, which had previously been vested in the supervisor, assessor and clerk of the town of West Chicago, was trans-

ferred to the park commissioners, and the same statute of 1895, expressly adopted article IX of the Cities and Village Act and all acts amendatory thereto, for the government of the park commissiones in respect to such special assessments. This is the statute of 1895 so frequently referred to in the objections and assignments of error in this record. By its terms (Section 20, Starr & Curtis, page 2910) it conferred authority upon the park commissioners to levy, assess and collect a special assessment, where such improvement has been authorized and partly or wholly completed and the assessment therefor had been set aside by the courts. Under this authority the West Chicago Park Commissioners on August 4, 1896, passed an ordinance providing for a special assessment to pay the cost of said improvement, and a petition was filed in the County Court of Cook County August 28, 1896, for that purpose. This is the original petition in the case now before the court. On the 29th day of August, 1896, the assessment roll was filed in said case assessing the cost upon the neighboring lands according to the benefits resulting thereto from the improvement.

Numerous objections were filed against the assessment then levied, and on the 27th day of April, 1897, upon hearing of the legal objections the same were sustained, and the petition was dismissed. From this order the West Park Commissioners appealed to the Supreme Court of Illinois, *West Chicago Park Commissioners* v. *Farber et al.*, 171 Illinois, 146. The decision of the County Court was reversed and the case was remanded for further proceedings, December 22, 1897.

Being redocketed in the County Court further objections were filed by the plaintiffs in error herein, and jury

being waived by agreement, the issues were tried by the court, and the assessment roll was confirmed. Several objectors prayed an appeal to the Illinois Supreme Court. The decisions on these appeals are found in *Cummings* v. *West Chi. Pk. Comrs.*, 181 Illinois Reports, 136, *Culver* v. *West Chi. Pk. Comrs.*, 182 Illinois Reports, 134, and *Farrell* v. *West Chi. Park Comrs.*, 182 Illinois Reports, 250, where the judgment of confirmation was approved by the Illinois Supreme Court October 13, 1899. From this judgment affirming the judgment of the County Court this case is now brought to the United States Supreme Court by writ of error, to review the "federal questions" raised in the court below.

The assignments of error accompanying the return to the writ of error are as follows (Pr. Rec., 86):

First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and each of them.

Second. The County Court of Cook County should have dismissed the petition for confirmation of said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient to support the said assessment, and also on the further ground that in view of the evidence before the court the same appeared to be insufficient in law, and the said Supreme Court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the County Court of Cook County had jurisdiction to confirm the assessment appealed from upon the property of the plaintiffs in error and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by the ordinance and proceeding originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after completion of the work.

Sixth. If the court was right in holding that the provision in the ordinance of March, 1893, for a special assessment to pay for said improvement had any validity, then the court erred in denying plaintiffs in error and each of them the benefit of the judgment of the June term, 1893, confirming the assessment then before the court.

Seventh. As to plaintiff in error Lombard, the court erred in denying him the benefit of his contract with the defendants in error, fixing the amount of the assessment on his property.

Eighth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Ninth. That by the record aforesaid it appears that the judgment aforesaid was given for the West Chicago Park Commissioners against the said J. L. Lombard *et al.*, whereas by the law of the land the said judgment ought to have been for the said J. L. Lombard *et al.* against the said West Chicago Park Commissioners.

IMPORTANCE OF THE CONTROVERSY.

It may be presumed that the Supreme Court of Illinois, in deciding this case, gave to each of the grave and far-reaching questions involved therein, searching and complete consideration. An expenditure of over a quarter of a million dollars had been made by a municipality created by an act of the legislature, under authority of the Illinois Constitution, investing such municipality with the power and duty of making the improvement, investing it with the power and duty of providing by ordinance for the expense of the improvement, and investing it with the power and duty of visiting the burden of the cost of such improvement, equitably upon the lands specially benefited thereby.

This taxing power was to be exercised upon the most nearly just and equitable grounds that the wisdom of the legislature had been able to devise. The proceedings for the assessment must be had before a judge elected by the people whose interests were involved; and those interests were to be protected by a jury selected from among those people; and at the hearing it is a noticeable fact that not one witness nor one objector whose name appears in this record had the hardihood to say or claim that the benefits assessed had not been received by them, and the plaintiffs in error now formally concede that fact. Some of the witnesses for the objectors testified that each lot was benefited two or three times the amount of the assessment, and if their testimony is scrutinized it will be seen that even those valuations were underestimates of the actual benefits received.

Nor has counsel, anywhere, in any court, had the

temerity to argue the failure of benefits equal, or more than equal to the proposed assessment. These large expenditures were made upon the legitimate anticipation that the persons receiving, in benefits, three or four times their cost, should be required to pay for the improvement. The proposition that, all this being true, the public treasury, drained from hundreds of thousands of citizens deriving but a minimum of benefit, if any, should foot the bill, was one which, of itself, would have appealed to the Illinois Supreme Court with enough of gravity to induce a most serious consideration of every question raised, against the validity of the proceedings.

Points.

I.

(1) "IT IS ESSENTIAL TO THE JURISDICTION OF THIS COURT OVER THE JUDGMENT OF A STATE COURT THAT IT SHALL APPEAR THAT ONE OF THE QUESTIONS MENTIONED IN THE ACT (SECTION 709 OF THE REVISED STATUTES OF THE UNITED STATES) MUST HAVE BEEN RAISED AND PRESENTED TO THE STATE COURT."

(2) "SUCH QUESTION MUST HAVE BEEN DECIDED BY THE STATE COURT OR ITS DECISION MUST HAVE BEEN NECESSARY TO THE JUDGMENT OR DECREE OF THE CASE."

(3) "IF SUCH QUESTION WAS RIGHTLY DECIDED THE JUDGMENT MUST BE AFFIRMED."

Murdock v. *Mayor, etc., of Memphis,* 87 U. S., 590.

THE UNITED STATES COURT WILL CONSIDER ONLY THE FEDERAL QUESTION; THE DECISION OF THE STATE COURT ON ALL OTHER QUESTIONS, AND ON ALL QUESTIONS OF FACT, IS FINAL AND WILL NOT BE DISTURBED.

Murdock v. *Memphis*, 87 U. S., 590.

ALTHOUGH ONE FEDERAL QUESTION IS PROPERLY RAISED THE UNITED STATES SUPREME COURT WILL NOT CONSIDER ANOTHER FEDERAL QUESTION WHICH WAS NOT PROPERLY RAISED IN THE COURT BELOW.

Dewey v. *Des Moines*, 173 U. S., 193.

Keokuk & H. Co. v. *Illinois*, 175 U. S., 626 (1900).

Chapin v Frye 179 U.S. 127

NOR IS IT SUFFICIENT THAT THE FEDERAL QUESTION BE RAISED BELOW, MERELY; IT IS ALSO NECESSARY THAT "THE PLAINTIFF IN ERROR SHALL FILE AN ASSIGNMENT OF ERRORS WHICH SHALL SET OUT SEPARATELY AND PARTICULARLY EACH ERROR ASSERTED AND INTENDED TO BE URGED. * * * ERRORS NOT ASSIGNED ACCORDING TO THIS RULE WILL BE DISREGARDED."

Rule 35 of this court.

Stevens v. *Gladding et al.*, 19 How., 64.

Grape Creek Coal Co. v. *Farmers' L. & T. Co.*, 24 U. S. App., 38.

2 Encyc. Pl. & Pr., 942-3.

THE SAME RULE, REQUIRING ASSIGNMENT OF ERRORS, PREVAILS IN ILLINOIS AND IS ENFORCED WITH GREAT STRICTNESS.

Rule 11, Ill. Sup. Ct., 168 Ills. Rep., 12.

Union Mut. L. Ins. Co. v. *Kirtchoff*, 149 Ill., 536.

IT IS NECESSARY THAT THE FEDERAL QUESTION SHOULD BE RAISED BY THE ASSIGNMENTS OF ERROR IN THE STATE SUPREME COURT AS WELL AS IN THE NISI PRIUS COURT; ERGO; IT IS NECESSARY THAT IT SHOULD BE RAISED IN THE ASSIGNMENTS OF ERROR IN THIS COURT.

Dewey v. *Des Moines*, 173 U. S., 193.

II.

"THE UNITED STATES SUPREME COURT WILL NOT UNDERTAKE TO CORRECT ERRORS OF STATE COURTS IN RESPECT TO DETAILS OF ASSESSMENTS. ITS JURISDICTION IS AT AN END IF IT FINDS THAT SUFFICIENT PROVISION HAS BEEN MADE BY THE STATE LAW FOR CONTESTING THE CHARGE WHEN IMPOSED."

Davidson v. *New Orleans*, 96 U. S., 97.

Followed by:

Kirtland v. *Hotchkiss*, 100 U. S., 491.
Kelly v. *Pittsburg*, 104 U. S., 78.
Hagar v. *Reclamation District*, 111 U. S., 701.
Head v. *Amoskeag Mfg. Co.*, 113 U. S., 9.
Wurtz v. *Hoagland*, 114 U. S., 606.
C. N. O. & T. P. R. R. v. *Kentucky*, 115 U. S., 321.
Spencer v. *Merchant*, 125 U. S., 345.
Bell's Gap R. R. v. *Pensylvania*, 134 U. S., 233.
Lent v. *Tillson*, 140 U. S., 316.
Marchant v. *Penn. R. R. Co.*, 153 U. S., 380.
Watson v. *Nevin*, 128 U. S., 578.
Roach v. *Nevin*, 128 U. S., 578.
Huling v. *Kaw Valley R. R.*, 130 U. S., 559.
Winona & St. P. Land Co. v. *Minnesota*, 159 U. S., 526.

Eldridge v. *Trezevant*, 160 U. S., 452.

Fallbrook Irr. District v. *Bradley*, 164 U. S., 112.

C. B. & Q. R. R. v. *Chicago*, 166 U. S., 226.

Castillo v. *McConnico*, 168 U. S., 674.

Backus v. *Fort St. Union Depot Co.*, 169 U. S., 557.

Bellingham R. R. v. *New Whatcomb*, 172 U. S., 314.

Dewey v. *Des Moines*, 173 U. S., 193.

Weyerhauser v. *Minnesota*, 176 U. S., 550.

McGoun v. *Ill. Tr. & Sav. Bank*, 170 U. S., 283.

III.

THE OBJECTION THAT THE FIRST PROCEEDING IN THE COUNTY COURT WAS FOR COLLECTION OF A TAX, AS DISTINGUISHED FROM AN ASSESSMENT, AND THAT THEREFORE QUESTION OF BENEFITS WAS NOT CONSIDERED, IS NOT FOUNDED ON FACT, IS NOT WELL TAKEN IN LAW, HAS BEEN DENIED BY THE STATE SUPREME COURT, AND RAISES NO FEDERAL QUESTION.

Starr & Curtis's Revised Statutes Ill., Ed. 1896. page 748, Ch. 24, Art. IX, paragraph 133.

Laws of Illinois of 1895, page 100.

Spencer v. *Merchant*, 125 U. S., 345.

Bellingham v. *New Whatcomb*, 172 U. S., 314.

Cummings v. *West Chicago Park Commissioners*, 181 Ill., 136.

IV.

THAT THE ORDINANCE OF MARCH 28TH, 1893, WAS VALID SO FAR AS TO AUTHORIZE AN ASSESSMENT, HAS BEEN SO HELD BY THE ILLINOIS SUPREME COURT, AND THE OBJECTION THERETO BECAUSE DECLARED VOID IN OTHER PARTS, IS NOT WELL TAKEN IN LAW, AND RAISES NO FEDERAL QUESTION.

If a statute or ordinance is void in part only, the rest of it, if separable, will be enforced, without reference to the void part.

White v. *City of Alton*, 149 Ill., 626.
Illinois Constitution, 1870, Art. 4, Sec. 13.
23 Am. & Eng. Cyc. Law, 225.
Keokuk, etc., Line v. *Keokuk*, 95 U. S., 80.
Cummings v. *West Chicago Park Commissioners*, 181 Ill., 136.

V.

"NO NEW RIGHT WAS CONFERRED BY THE PARK ACT OF JULY 1, 1895. THAT ACT PROVIDED A PROCEDURE ONLY."

West Park Commrs. v. *Farber*, 171 Ill., 146, at p. 156.

MOREOVER, WHERE A NEW STATUTE HAD BEEN ENACTED EXPRESSLY TO TAKE THE PLACE OF A FORMER UNCONSTITUTIONAL STATUTE, THIS COURT HAS HELD THE NEW ACT CONSTITUTIONAL, AND HAS ENFORCED THE ASSESSMENT THEREUNDER.

Spencer v. *Merchant*, 96 U. S., 97.
Bellingham v. *New Whatcomb*, 172 U. S., 314.

OBJECTION THAT LAW IS EX POST FACTO WILL NOT BE CONSIDERED UNDER A GENERAL OBJECTION THAT DECISION VIOLATES THE FOURTEENTH AMENDMENT.

Denny v. *Des Moines*, 175 U. S., 193.
Clarke v. *McDade*, 165 U. S., 168.
Keokuk Bridge Co. v. *Illinois*, 175 U. S., 626.

ARGUMENT.

I.

NO FEDERAL QUESTION INVOLVED.

This case is brought here on writ of error to the Illinois Supreme Court under section 709 of the United States Revised Statutes. We have cited authorities to the effect that these are the only provisions under which such writ of error lies, and that under this statute the United States Supreme Court will consider only the "federal questions" properly raised, and necessarily involved in the decision of the court below. That being the law all questions of state practice, all questions of construction of the state statutes, and all questions arising under the common law will be regarded as finally determined in the Illinois Courts, and only those questions arising under the constitution or laws of the United States and decided adversely to the party claiming under them, will be argued here.

Furthermore, even if the decision on any such "federal question" is here assigned as error, it does not follow, necessarily, that such "federal question" is properly before this court, for in addition to assigning it as error in *this* court it must appear that the same (and not a different) "federal question" was properly raised in the *State* Courts, so as to be necessarily involved in the decision. *E converso,* it is not sufficient that the question should have been raised below, for it must also be assigned as error in this court. In other words the federal question must be (1) raised below *and* (2) assigned as

error here, or it will not be considered. Neither one alone will suffice.

In the case of *Murdock* v. *Memphis* (87 U. S., 590), there is an elaborate discussion by the court, and by several distinguished *amici curiae,* concerning the proper limits to be observed by the United States Supreme Court in reviewing the judgment of the highest court of a state. It was observed that the jurisdiction to review the state court was conferred by an amendment of 1867 to the judiciary act of 1789. The act of 1789 and the amendment of 1867 are there printed in parallel columns for ready comparison. The act of 1867 now appears as Section 709 of the Revised Statutes.

By the judiciary act of 1789 it was *expressly* provided that "no other error shall be assigned or regarded as a ground for reversal in any such case aforesaid than such as appears on the face of the record and immediately respects the before mentioned questions of validity or construction of said constitution treaties, statutes, commissions or authorities in dispute."

This *express* limitation upon the power of this court to review the decision of a state court is not found in the amendment of 1867, and it was therefore argued with extraordinary ability that the limitation no longer existed; but after very careful consideration the court decided in a most learned, elaborate and exhaustive opinion in *Murdock* v. *Memphis, supra,* that it was still limited, in reviewing the state court, to the so-called "federal questions," and that in all other respects the decision and judgment of the State Court was still final.

In this record it appears that only five objections to the confirmation of assessment filed below raised federal

questions; the same five objections were urged as reasons for dismissing the proceeding. (Printed Rec., 26-29.) In slightly different phraseology these objections were assigned as errors in the Illinois Supreme Court (Printed Rec., 72), but neither expressly nor by implication is any of those objections mentioned in the assignments of error in this court, as a reason for reversing the judgment of the Supreme Court of Illinois. This will clearly appear if the assignments of error be read with any degree of care. They are as follows:

"*First.* The court *erred* in affirming the judgment of confirmation against the property of plaintiffs in error and each of them."

This "assignment of error" is so general and indefinite that it would not be considered in the State Court. The function of an assignment of error is to point out specifically the error complained of, so as to direct the attention of the court to the proper parts of the record, and to inform the opposing party as to the matters it is proposed to argue. This specification does neither. It simply says that the plaintiff in error is dissatisfied with the result of the suit. Furthermore, it may well be inferred that the error complained of referred to the construction of the state law. This assignment merely states that there was error—it does not state that the judgment, or the statute on which it was based, or the ordinance on which the assessment was levied, were unconstitutional or void; and even if it had been stated that the statute was unconstitutional and void, while that assignment would be more definite, yet it would not raise a "*federal* question," for it would be taken as applying to the constitution of the state, and not to the Constitution of the United States.

Kipley v. *Illinois,* 170 U. S., 182.

An assignment of error that the decision below denied to appellant "due process of law," does not raise a federal question, for it will be taken to refer to the state constitution only.

Miller v. *Cornwall,* 168 U. S., 131.
Capital National Bank v. *First National Bank,* 172 U. S., 425.

"*Second.* The County Court should have dismissed the petition for confirmation of the said assessment on the motion of plaintiff in error on the ground that upon its face the record was *insufficient* to support the said assessment, and also on the further ground that in view of the evidence before the court the same appeared to be *insufficient in law,* and the said Supreme Court erred in sustaining said refusal and in holding that the same was correct."

In what respect the record was insufficient, is not stated; nor does it appear that the insufficiency complained of in any way relates to any federal question. If this objection had been made at every stage of the proceedings, from the filing of the petition in the County Court to the assignment of error in this court, we would still be left wholly in the dark as to the nature of the "*federal* question" the plaintiffs in error expect to argue.

Further, a "view of the evidence before the court" would raise questions of fact, which this court will not consider.

"*Third.* The court erred in holding that the County Court of Cook County had *jurisdiction* to confirm the assessment appealed from upon the property of the plaintiffs in error, and each of them."

This presents at most a question under the state constitution. Whether the County Court is the proper forum in which to confirm a special assessment is not a federal question. It is a question of state law, and not a federal law; and if the want of jurisdiction is alleged to be from want of service, or the like, then it is a question of fact into which this court will not inquire.

"*Fourth.* The court erred in holding that the property of the plaintiffs in error could *lawfully* be assessed for the said improvement by the ordinance and proceeding originating after the work was done, the original ordinance for the assessment having been void."

This, too, will be taken to refer to state law. Whether the assessment was "lawful" or even constitutional, is not a federal question, but a state question; and whether the original ordinance was "void" or not will be taken to refer to the state law.

"*Fifth.* The court having held that the original ordinance for said improvement passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was *sufficient to support such a proceeding* after the work was done, based on a new ordinance passed after the completion of the work."

If the ordinance was void it was void under the state law. If it was insufficient to support the first assessment, it was under the state law. And if it is still insufficient, it is so under the state law. The federal constitution, and the federal statutes appear to have nothing to do with the matter. Such an objection or assignment of error below would not avail to raise a federal question, nor will it avail in this court.

"*Sixth.* If the court was right in holding that the provisions in the ordinance of March, 1893, for a special assessment to pay for said improvement had any validity, then the court erred in denying plaintiffs in error and each of them the benefit of the judgment of the June term, A. D. 1893, confirming the assessment then before the court."

The alleged invalidity of the first ordinance, and the supposed error in confirming the second assessment alike relate to the state law, and not to any infraction of the federal constitution or statutes. Section 709 of the United States Revised Statutes, under which this writ of error is sued out, provides particularly that the "right, privilege or immunity" shall be "specially set up or claimed." It is an elementary rule that the assignment of error shall be complete within itself, in pointing out definitely the error complained of. This assignment of error may be complete within itself, but if it is the error complained of is not the decision of any federal question.

"*Seventh.* As to the plaintiff in error, Lombard, the court erred in *denying him the benefit of his contract* with the defendants in error fixing the amount of the assessment on his property."

This objection relates to no federal question. It has nothing to do with the impairment of any contract, by law or otherwise, under the United States Constitution.

From the language used no one could know that any constitution, either state or federal, was invoked in aid of the preservation of *any* right or immunity of person or property. It was not considered to be a federal question below, but an ordinary contract case under the ordi-

nary state law relating to contracts, and was decided on these grounds; and probably on questions of fact, wherewith this court does not deal, in suits at law.

Defendant in error respectfully submits that it is not apprised, by any one or more of the "assignments of error" filed in this court, of any federal question that the plaintiffs in error intend to argue. None of these assignments question, *in terms,* "the validity of a treaty or statute of, or an authority exercised under the United States" nor the "validity of a statute of or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States." Nor is any title, right, privilege or immunity claimed under the constitution or any treaty or statute of the United States." In all the assignments of error, we beg to repeat, no mention is made, of the Constitution of the United States, nor of any treaty or statute of the United States.

II.

"DUE PROCESS OF LAW" HAS COME TO MEAN, WHEN USED CONCERNING SPECIAL ASSESSMENTS, OPPORTUNITY TO CONTEST ALL ASSESSMENTS IN EXCESS OF BENEFITS CONFERRED.

THE FEDERAL QUESTION INVOLVED IS WHETHER OR NOT THE LAW, AS ENACTED, PROVIDES OPPORTUNITY TO CONTEST THE ASSESSMENT BY ADVERSARY PROCEEDINGS.

WHETHER, IN THE PARTICULAR CASE, THE ASSESSMENT EXCEEDED THE BENEFITS, OR WHETHER THE ASSESSMENT WAS LEVIED BEFORE THE BENEFITS WERE RECEIVED, ARE NOT FEDERAL QUESTIONS. NOR IS ANY ATTEMPT MADE IN THIS CASE TO DENY THAT OBJECTOR'S LANDS WERE BENEFITED TO THE FULL EXTENT OF THE ASSESSMENT.

DUE PROCESS OF LAW.

The plaintiffs in error objected in the courts below that if the assessment in question were collected the property of the objectors would be taken "without due process of law," in violation of the XIVth amendment to the Constitution of the United States.

It would seem that in the good year of our Lord, nineteen hundred and one it should not be necessary to resort to the highest judicial tribunal in the land to determine whether an assessment for certain improvements is by "due process of law." These words, or their equivalent, "Law of the land," appear in the Constitution of the State of Illinois adopted in 1870 (Art. II, Sec. 2), in the Illinois Constitution of 1848 (Art. XIII, Sec. 8), in the Constitution of Illinois of 1818 (Art. VIII, Sec. 8), in the ordinance of 1787 (Art. II), in the constitutions of most if not all of the United States from the time of the revolution to the present day, in the XIVth and Vth amendments to the federal constitution, and in Magna Carta itself, which provides that no freeman shall be imprisoned or disseised *"nisi per legale judicium parium suorum vel per legem terrae."* And yet we do not know the meaning of "law of the land" or "due process of law."

In 1819 in the case of *Bank* v. *Oakley* (4 Wheat., 235) Justice JOHNSON said:

> "As to the words from Magna Carta incorporated in the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

This was before the XIVth amendment was passed and before the flood of litigation from the state courts which followed that amendment inundated the United States Supreme Court.

In 1877, Mr. Justice MILLER, in *Davidson* v. *New Orleans* (96 U. S., 97) said:

> "Most of these provisions, including the one under consideration, either in terms or in substance, have been embodied in the constitutions of the several states, and in one shape or another have been the subject of judicial construction. It must be confessed, however, that the constitutional meaning or value of the phrase, 'due process of law,' remains to-day without that satisfactory precision of definition which judicial decisions have given to nearly all the other guaranties of personal rights found in the consitutions of the several states and of the United States."

Twenty years later, in 1898, Mr. Justice MCKENNA was pleased to say, in *Orient Insurance Co.* v. *Daggs* (172 U. S., 557):

> "What it is for a state to deprive a person of life, liberty, or property without due process of law is not much nearer to precise definition to-day than it was said to be by Mr. Justice Miller in *Davidson* v. *New Orleans*, 96 U. S., 97."

We will, therefore, not undertake to define "Due Process of Law," but will be content to cite a few cases where this court has held the procedure to be in violation of the constitutional prohibition, many cases where this court has held that the constitutional provision has *not* been violated, and then endeavor to show that the case at bar falls in the latter class.

In *Davidson* v. *New Orleans* (96 U. S., 97) Mr. Justice MILLER said:

"Is it not a little remarkable that while this provision has been in the Constitution of the United States as a restraint upon the authority of the federal government, for nearly a century, and while, during all that time the manner in which the powers of that government have been exercised has been watched with jealousy and subjected to the most rigid criticism in all its branches, this special limitation on its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion.

"But while it has been a part of the constitution as a restraint upon the powers of the states only a few years, the docket of this court has been crowded with cases in which we are asked to hold that state courts and state legislatures have deprived their own citizens of life, liberty or property without due process of law. It would seem, from the character of many of the cases before us, and the arguments made in them that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him, and of the merits of the legislation on which such decision may be founded."

"As contributing to some extent to * * * determining what classes of cases do not fall within its provisions, we lay down the following proposition, as applicable to the case before us":

"That whenever, by the laws of a state or by state authority a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person or such proceeding with regard to the property as is appropriate to

> the nature of the case, the judgment in such proceeding cannot be said to be without due process of law, however obnoxious it may be to other objections. It may violate some provision of the state constitution, against unequal taxation, but the Federal Constitution imposes no restraints on the state in that regard. If private property is taken for public uses without just compensation it must be remembered that, when the XIVth amendment was adopted, the provision on that subject in immediate juxtaposition in the Vth amendment with the one we are construing, was left out and this was taken. It may possibly violate some of those principles of general constitutional law which, if we were sitting in review of a Circuit Court of the United States, as we were in the Topeka case, 20 Wall., 655, we could take jurisdiction of. But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that where, by the laws of the state, the party aggrieved has, as regards the issues affecting his property, a fair trial in a court of justice, according to the modes of proceeding applicable to such case, that he has been deprived of that property without due process of law." (96 U. S., 97.)

The proposition laid down by Mr. Justice Miller in *Davidson* v. *New Orleans* has been followed and approved in the following cases. The objection of the aggrieved party in each case is briefly mentioned.

In *Corry* v. *Campbell*, 24 S. C., 926 (1878), (from Ohio Sup. Ct.), merely general objections were filed: "Repugnant to the XIVth Amendment to the Constitution of the United States."

In *Kelly* v. *Pittsburg*, 104 U. S., 78 (from Sup. Ct. Penn., 1881), appellant's farm lands were taxed for mu-

nicipal purposes, and appraised much in excess of their true value; but an appeal to board of review was provided by the state law. Held due process.

In *Hagar* v. *Reclamation Dist.*, 111 U. S., 701 (California, 1883), appellant complained that he had no opportunity to object before or at the time the assessment was made; but as the assessment could, under California Practice, be collected only by suit, where owners were notified and might defend, held due process of law.

In *Head* v. *Amoskeag Mfg. Co.*, 113 U. S., 9. New Hampshire Sup. Ct., appellant objected that his property was taken without due process of law for private use by being flowed for mill purposes. The court below heard evidence as to damages, and appointed commissioners to assess them. Held due process of law.

In *Wurts* v. *Hoagland*, 114 U. S., 606 (New Jersey, 1884), under a New Jersey statute, five owners of marsh lands petitioned for drainage at expense of themselves and other owners. The court appointed commisioners to determine what lands were benefited, and should be assessed, and owners had right to be heard in court. Held, due process of law.

In *C. N. O. & T. P. R. R.* v. *Kentucky*, 115 U. S., 321 (Ky. Tax Cases), the railroad complained that it was taxed in different class from other property owners, and that assessment was spread without notice to it. Held, that due process of law did not mean judicial proceedings. Notice by statute, of the meetings of the Board of Equalization was sufficient.

In *Kirtland* v. *Hotchkiss,* 100 U. S., 491, the plaintiffs in error sought to restrain the collection of a tax against his real estate in Connecticut, assessed by reason of his ownership of certain bonds. The right to tax a debt, secured by mortgage in another state, was questioned. The court quoting from *Bank* v. *Billings,* 4 Pet., 563, said:

> "This vital power (of taxation) may be abused, but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments." "So long as the state, by its system of taxation does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizen by the Constitution of the United States, this court, as between a citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous."

In *Spencer* v. *Merchant,* 125 U. S., 345 (N. Y. Sup. Ct., 1887), appellants objected to a special assessment because (1) it was an attempt to validate a void assessment, (2) it was exorbitant, (3) it included interest and expense of collecting parts of old assessment. This case is quite similar, in some of its facts, to the case at bar, though it goes much farther than is necessary for our purposes in sustaining the action of the State Court. A public improvement was made under a statute of New York providing for such works, to be paid for by special assessment. A number of the property owners refused to pay the assessment, and as to their lots the charge was carried forward, on the tax books, as unpaid taxes, for five years, when the statute under which the assesment was levied was de-

cleared unconstitutional. Note that it was the statute that was declared unconstitutional, and not a part of an ordinance, as in the case at bar. Thereupon the New York Legislature passed a new statute directing that this specific deficiency should be reassessed upon the specific lots whose shares of the original assessment had not been paid, together with accrued interest and costs incurred in the proceedings. The appellants objected that this proceeding was repugnant to the United States Constitution, because it was an attempt to validate a void assessment, and to levy an assessment after the work had been done under a void assessment and void statute, and that the charge was exorbitant and excessive. It was also objected that the Legislature had not left it to any jury or commissioners to determine how much money had to be raised, or on what property it should be assessed. In the case at bar it is complained that it was left to such commissioners. It seems that persons asked to pay taxes are hard to please. The court said:

> "The act of 1881 determines absolutely and conclusively the amount of tax to be raised and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the Legislature whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so, and may settle both questions for itself. * * * The landowner was given a hearing, so there was no constitutional objection in that respect. Nor was that hearing illusory. We think the act was constitutional. * * * If the Legislature provides for notice to and hearing of each proprietor, at some stage of the pro-

ceedings, upon the question what proportion of the tax shall be assessed upon his land, there is NO TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW. The statute of 1881 afforded the owners notice and hearing upon the question of the equitable apportionment among them of the sum directed to be levied upon all of them, and thus enabled them to contest the constitutionality of the statute; and that was all the notice and hearing to which they were entitled."

In *Bell's Gap R. R.* v. *Pennsylvania,* 134 U. S., 233 (1889), Pennsylvania levied a three-mill tax on the FACE VALUE of all corporate stocks and securities, to be paid for by the corporation, and kept out of dividends. Objected to on the ground that the FACE values were very divergent from the real values. Held, that "Be that as it may, the law does not make any discrimination in this regard which the state is not competent to make."

> "As to want of notice to the owners of the bonds * * * it is urged that it is a taking of the bondholders' property without due process of law. We cannot see it in this light. * * * It involves no violation of due *process* of law when it is executed according to the customary *forms* and established *usages,* or in subordination to the principles which underlie them."

In *Lent* v. *Tillson,* 140 U. S., 316 (California Sup. St., 1890), an assessment was levied to meet the cost of work done under an act of the California Legislature to widen Du Pont street, San Francisco. It was objected that one of the commissioners who made the assessment roll was an interested party, that alterations in the report were irregularly made, and that the appraisement was not fair

or just. Held that none of these objections involved any federal question. Mr. Joseph H. Choate appeared for the plaintiffs in error, and A. H. Garland for the defendants in error. The court held, in regard to "due process of law," that

> "Ample opportunity was given to all persons interested to test, in a court of competent jurisdiction the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the statute. * * * If we had any doubt of the correctness of these views we should accept the interpretation which the highest court of the state places upon the statute. * * * We must assume that inferior tribunals of the state will give effect to such enactment as interpreted by the highest court of the state." "It is contended, however, that the act was *so administered* as to result in depriving the plaintiffs of their property without due process of law. This contention is material only so far as it involves the inquiry as to whether the tribunals charged by the statute with the execution of its provisions acquired *jurisdiction* to proceed in respect to the lots or lands in question and the owners thereof. Jurisdiction was, of course, essential before plaintiff's property could be burdened with the assessment; but errors in the mere administration of the statute, not involving jurisdiction of the subject and of the parties could not justify this court, in its re-examination of the judgment of the State Court, upon writ of error, to hold that the state had deprived, or was about to deprive the plaintiffs of their property without due process of law."

In *Marchant* v. *Penn. R. R. Co.*, 153 U. S., 380 (from Penn. Sup. Ct., 1893), plaintiffs in error sought to recover for damages sustained by reason of defendant's building, and elevating its tracks along the street in front of plaintiff's lands. None of plaintiff's land was taken.

The State Court held that while a plaintiff could recover for land taken, he could not recover for lands damaged under such circumstances.

This court said:

> "It is sufficient for us in the present case to say that even if the plaintiff could be regarded as having been deprived of her property, the proceedings that so resulted were in due process of law. The plaintiff below had the benefit of a full and fair trial in the several courts of her own state. In those courts her rights were measured, not by laws made to affect her individually, but by general provisions of law applicable to all those in like condition."

In *Watson* v. *Nevin,* 128 U. S., 578, and *Roach* v. *Nevin,* 128 U. S., 578 (from Ky. Ct. App., 1888), appellants objected to an assessment under a statute of Kentucky providing that streets might be laid out at the cost of the abutting owners, the cost to be assessed in proportion to the areas of the abutting lots, with an addition for corner lots. The statute provided for notice by publication, and hearing of objections before the city engineer or his deputy, the tax to be enforced by the courts. The court followed *Davidson* v. *New Orleans,* and held that there was opportunity to the objectors to be heard, and therefore due process of law.

In *Huling* v. *Kaw Valley R. R.,* 130 U. S., 559, the plaintiff in error sued for trespass to lands which the defendant railroad acquired by condemnation. Plaintiff claimed that there was not due process of law, in that the railroad merely published notice that it would ask the county commissioners to lay out a right of way for it through certain sections, which was done, and the value as fixed by the commissioners paid into the county office.

Held, that as opportunity was given to appear and defend, though only notice was by publication, there was due process of law.

In *Winona & St. Peter Land Co.* v. *Minnesota,* 159 U. S., 526, the legislature of Minnesota enacted a statute directing its assessors to put on the tax lists property which had escaped taxation in past years. Certain railroad lands which were exempt in the hands of the railroad had been under contract several years. They were taxed. There was no notice, except by passage of the statute, but the owners appeared and defended. The Minnesota statute provided for the collection of delinquent taxes by application to the court for judgment and tax sale, exactly as in Illinois. The court said:

> "We think this opens to the property owner full opportunity for defense and that he can raise every objection to which, in law, he is entitled. * * * Questions of this kind have been repeatedly before this court, and the rule in respect thereto often declared. That rule is that a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe the XIVth amendment to the Constitution * * * if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection."

In Illinois the owner has two such opportunities—once in the assessment proceedings and again upon application for judgment of sale for delinquent assessments. Either alone would be "due process of law."

In *Eldridge* v. *Trezevant,* 160 U. S., 452 (from La., 1895), plaintiff in error complained that the defendant constructed a large levee along the banks of the Mississippi on plaintiff's lands, and that the laws of Louisiana

provided no means of ascertaining or paying the damage thereby sustained. The court decided:

> "With the admission that under the state constitution and laws as construed by the highest court of the state the plaintiff was not entitled to the remedies he sought, we are requested to hold that he can obtain relief by invoking in the Circuit Court of the United States the protection of the 14th amendment to the Constitution of the United States, which declares that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * * The subject-matter of such rights and regulations falls within the control of the states, and the provisions of the 14th amendment are satisfied if, in cases like the present one, the state law, with its benefits and its obligations, is *impartially administered.*"

In *Fallbrook Irr. Dist.* v. *Bradley,* 164 U. S., 112 (Cal., 1896), this was a test case in which it was claimed that a California Irrigation District law provided for the taking of property without due process of law. The case was argued by Benjamin Harrison for the appellants and Joseph H. Choate for appellees. The statute authorized supervisors to determine what land, that might be irrigated from a common source, should pay for the improvement. The Supreme Court held that the findings of the supervisors were conclusive, that "it was not constitutionally necessary in such cases to give a rehearing or an appeal." As to notice and hearing, the court decided:

> "It never was intended that this court should, as the effect of the 14th amendment, be transformed into a court of appeal where all decisions of state courts involving merely questions of general justice and equitable consideration in the taking of prop-

erty, should be submitted to this court for its determination.

We think the right to a hearing in regard to all these facts is given by the act, and that it has been practically so construed by the Supreme Court of California."

"The first two sections provide for petition and hearing. The petition is to be signed by a majority of the holders of land capable of one mode of irrigation, etc. This petition is to be presented to the board of supervisors at their next meeting and notice of intended presentation must be published two weeks. The board shall hear the same and shall establish boundaries."

"Thus the act provides for a hearing of the land holders both as to the question whether his land will be benefited by the proposed irrigation, and when that has been decided in favor of the benefits, then upon the question of the valuation and assessment of and upon his land included in the district. Our conclusion is that the act as construed with reference to the objections considered under this third head is unassailable."

In *C., B. & Q. R. R.* v. *Chicago,* 166 U. S., 226 (Ill., 1896), the plaintiff in error complained that a street had been opened across its land without just compensation, the jury awarding but one dollar damages. The court, in its opinion, intimated that the right to "due process of law" included the right to "due compensation" for "private property taken for public uses," although former decisions had clearly distinguished the two rights. Thus in *Davidson* v. *New Orleans,* it was said:

"The federal constitution imposes no restraints on the states in regard to unequal taxation. If private property be taken for public uses without just compensation it must be remembered that when the XIVth amendment was adopted the provision on

> that subject in immediate juxtaposition in the amendment with the one we are construing WAS LEFT OUT AND THIS WAS TAKEN."

But this C., B. & Q. case decided that, even under the new construction of "Due Process of Law," the question of benefits could be examined only by the jury, and in accordance with the course of the common law, and the assessment, or condemnation, was sustained.

In *Castillo* v. *McConnico,* 168 U. S., 674, back taxes for several years were assessed against the lands of plaintiff in error, and the only service on him was by publication of notice, using his initials instead of his Christian name, and notifying the owner "or *her* heirs."

> "The vice which underlies the entire argument of plaintiff in error arises from a failure to distinguish between the essentials of due process of law under the 14th amendment, and matters which may or may not be essential under the terms of a state assessing or taxing law."

Held, that the error in, or omission of the name, was a mere state matter, and raised no question under the 14th amendment.

In *Bellingham B. & B. C. R. R.* v. *New Whatcomb,* 172 U. S., 314, as in *Spencer* v. *Merchant* (125 U. S., 345), there was a re-assessment to pay for the improvement, the first assessment having been declared void. Contract for the work was let in 1890 and work completed in October of that year. An assessment was then levied on abutting property. Suit was brought to foreclose the liens thus created, but the state courts annulled the assessment on the ground that the statute under which

it was assessed was void because it did not provide for hearing as to benefits. This was in 1895.

But in 1893 the legislature (of Washington) had passed a general act providing for the re-assessment of the cost of local improvements in cases where the original assessment "have been or may be directly or indirectly set aside, annulled or declared void by any court." The new statute provided for publication of notice ten days before date set for hearing before the CITY COUNCIL. The court said:

> "A re-assessment implies, not merely the fact of the improvement, but also that one attempt has been made to collect the cost and failed. Inquiry had been had in the courts and the one assessment had been set aside. The facts were known. Ten days' time does not seem unreasonably short to present objections to a re-assessment. And there is nothing in the case of the plaintiff in error to suggest any injustice. The improvements made on the street on which its lots abutted consisted in grading, planking and sidewalking. It is highly improbable that it could have been ignorant of the fact that they were being made. It MUST HAVE KNOWN ALSO THAT SUCH IMPROVEMENTS HAVE TO BE PAID FOR, AND THAT THE ORDINARY METHOD OF PAYMENT IS BY LOCAL ASSESSMENT ON THE PROPERTY BENEFITED. Litigation followed which was carried to the Supreme Court. * * * It may be that the court was advised that the plaintiff in error had contributed to the cost of that litigation."

In *Dewey* v. *Des Moines*, 173 U. S., 193, the Iowa courts had confirmed a special assessment and adjudged the lot owners liable personally for such portion of the cost assessed as should not be paid or realized out of sale of the lands. Plaintiff in

error, a non-resident, sought to enjoin the enforcement of the judgment as a personal liability. The court held that so far as a personal judgment was rendered against a non-resident, not served with process, it was unconstitutional, and reversed it to that extent only.

> "The two questions, the one as to the invalidity of the personal judgment, and the other as to the invalidity of the assessment on the lots, are not in any wise necessarily connected. * * * The assessment upon the lots might be valid while the provision for a personal judgment might be void, each depending upon different principles; and the question as to the invalidity of the personal judgment might, as in this case, be raised and argued without in any manner touching the question as to the invalidity of the assessment upon the lots. * * * Upon these facts we are compelled to hold that we are confined to a discussion of the *only* federal question which the record presents, viz.: the validity of the personal judgment against the plaintiff in error."

In *Weyerhauser* v. *Minnesota*, 176 U. S., 550, plaintiff in error complained that the assessment on his property has been increased without notice to him or opportunity to defend. The governor of the state had, under the Minnesota statute, raised the assessment on what he considered undervalued property. The court held:

> "The complaint of plaintiff in error seems to be that hearing before the governor was not provided. If the basis of this is that the owner of property must have notice of every step in taxation proceedings we agree with the Supreme Court of the state, that it is untenable. If the basis of the complaint is that the governor acted judicially and plaintiff in error was entitled to have notice, and be heard before he rendered judgment, it is also untenable.

> The governor does not act judicially. * * * But supposing the governor's act is a judgment; what is substantial comes afterwards; and if, against what may be detrimental in that the land owner CAN BE HEARD, he is afforded due process of law within the rule announced by the authorities. That the land owner MAY be heard is decided by the Supreme Court of the state. 'Within twenty days after the last publication of the delinquent list any person may, by answer, interpose any defense or objection he may have to the tax.' "

Please note. Just such a provision is in force in the Revenue Act of Illinois, under which this assessment will have to be collected.

> See Starr & Curtiss' Rev. Stat. Ill., Ed. 1896, page 3470, Sec. 193.

Magoun v. *Ill. Trust & Savings Bank,* 170 U. S., 283, is the Illinois inheritance tax case. The statute was alleged on writ of error to this court to be unconstitutional because estates of different amounts, and passing to relatives of different degrees of relationship, were taxed at different rates. The court quoted from Mr. Justice Field in *Mobile* v. *Kimball,* 102 U. S., 704:

> "This court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. It is not necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity."

In the following cases this court has held that there WAS a taking of property without due process of law:

In *Roller* v. *Holly*, 176 U. S., 398, the plaintiff in error complained that judgment had been rendered foreclosing his property without his having opportunity to defend—without due process of law. He was a non-resident, and notice was served on him, personally, five days before the time named therein for him to appear and defend. It would have required four days for him to reach the place of trial, and the fifth day was Sunday. Held not due process of law.

In *C., M. & St. P. R. R.* v. *Minnesota*, 134 U. S., 418 (1889), the Minnesota legislature enacted a statute providing that its railroad commission might fix railroad tariffs which should be not merely advisory, but conclusive and binding on the railroads. The court decided:

> "No hearing is provided for, no summons or notice to the company before the commission has found what it has to find and declared what it is to declare, no opportunity for the company to introduce witnesses before the commission, in fact nothing which has the semblance of due process of law."

Even in this case Justices Bradley, Gray and Lamar dissented, and Justice Miller concurred "with some hesitation."

In *Norwood* v. *Baker*, 172 U. S., 269, the plaintiff sought in the United States Circuit Court an injunction against an assessment levied upon abutting property according to frontage, without reference to benefits. Injunction issued.

> "The judgment of the Circuit Court must be affirmed *on the ground* that the assessment against the plaintiff's abutting property was under a rule which excluded any inquiry as to special benefits and

the necessary operation of which was to take private property for public use without compensation." Mr. Justice Brewer dissented.

Please note: No question is expressly raised in the case at bar concerning any taking of private property for public use without compensation. That article of the United States Constitution was not mentioned. It is in Art. V of the amendments that the taking without just compensation is prohibited, and that prohibition is a limitation on FEDERAL authority only. The next preceding clause was taken and this one left when the 14th amendment was adopted.

Note also that in the case at bar the ordinances and statutes DID provide for hearing as to benefits, and the plaintiffs in error appeared and were heard on that point.

This last case (*Norwood* v. *Baker*) was not heard on appeal from a state court (in which case only federal questions would be considered), but it was an appeal from the United States Circuit Court for Ohio. All questions were before the court, whether federal questions or not. In fact the court considers at great length the provisions of the Ohio Constitution. It might well have been decided just as it was on either of two grounds, not involving "compensation" under the 14th amendment, first, on the ground that the proceeding was contrary to the *State* Constitution because private property was taken without compensation. The difference between the question considered in reviewing a state court and in reviewing a United States Circuit Court is noted in the *Davidson* v. *New Orleans* case, 96 U.S., 97 quoted above p.30; second, on the ground that no hearing was provided—no "adver-

sary proceeding," as it was called in the Davidson case —and therefore there was no due process of law. The reasons actually advanced for the decision seem to make a considerable advance on the older authorities, but do us no harm in the case at bar; for whether the objectors were entitled to merely a *hearing* as to benefits, or to the actual *payment* of the benefits they cannot complain in this proceeding for the simple reason that they have had both hearing and payment. We *believe* that they were entitled merely to "due *process*"— "due *procedure*," due "formalities," and that it rested with the state and its officers and juries to see that those forms, proceedings and processes were not denied; we believe that the Federal Constitution guarantees the forms only, and the state must protect its own people and see that those forms are converted into reality. But that belief is not an essential part of our argument nor of our case. Even though the Federal Constitution guarantees *more* than mere process, more than due proceedings, and more than mere due form—even though it guarantees to the citizens of the state "just compensation" actually paid to him, this judgment of the Illinois Supreme Court should still be affirmed, for these objectors have actually received their benefits, and more than just compensation, and the record so shows.

In one of their assignments of error the plaintiffs in error complain that this assessment was levied AFTER the improvements were made—they complain that they received their benefits *before* they were taxed for them. If anything depends on the time for levying the assessment —whether before or after the improvement is made—it would seem that their objection would at least appear stronger if they had been taxed *before* they received their

compensation. Just such objection was made in the case of *Backus* v. *Fort St. Union Depot Co.*, 169 U. S., 557, but the court there held that if *provision was made* for afterwards paying just compensation that was sufficient to meet the requirements of the Federal Constitution—that the compensation need not be paid at the time the property was taken.

We suspect that the owners taxed are sometimes hard to please. If they are taxed first, before the improvement is made, they object that their property is taken without compensation; and if the improvement is put in first, as in the case at bar, and in *Spencer* v. *Merchant* (125 U. S., 345), or *Bellingham* v. *New Whatcomb* (172 U. S., 314), they complain that the assessment is without due process of law. The two cases last mentioned decide that a re-assessment MAY be made if the first is declared void.

THE FOLLOWING ARE THE VARIOUS STEPS, IN BRIEF, WHICH HAVE BEEN TAKEN IN THE STATE COURTS BEFORE THE PRESENT ASSESSMENT WAS FINALLY CONFIRMED. THEY ARE SUFFICIENT TO CONSTITUTE DUE PROCESS OF LAW:

(1) Illinois Constitution authorized special assessments, Art. IX, Sec. 9.

(2) Illinois Constitution, Art. VI, Sec. 18, gave County Courts jurisdiction in assessment matters.

(3) Act of 1873 incorporated the West Chicago Park Commissioners and authorized them to levy assessments. (S. & C. Rev. Stat., 2864 ff.)

(4) Act of 1895 provided method of hearing objections to assessment. (S. & C. Rev. Stat., 2907 ff.)

(5) Article IX of the Cities and Villages Act was ex-

pressly adopted for park boards to follow in court proceedings providing for petition, notice, objections, jury and hearing. (S. & C. Rev. Stat., 736 ff.)

(6) Petition by majority of the abutting owners for this improvement. (Printed Record, page 41.)

(7) Ordinance of park board ordering the improvement made to be paid for by special assessment. (Printed Record, p. 41; this Brief, p. 98)

(7) Assessment roll assessing (provisionally) the cost of the improvement according to benefits. (Printed Record, 10.)

(9) Petition to the County Court asking to have said provisional assessment confirmed. (Printed Record, 4.)

(10) Publication of notice of hearing five successive days—September 1st to 5th, inclusive,—announcing that hearing would be had on the 14th of September. (Printed Record, 18.)

(11) Posting of notices August 27th for hearing September 14th. (Printed Record, 19.)

(12) Mailing, on the 2d day of September, of notices of hearing on the 14th of September, to all known owners. (Rec., 20.)

(13) Order extending time to file objections to the 23d of September, 1895. (Printed Record, 12.)

(14) Objections filed and general appearance entered by these objectors. (Printed Record, 13.)

(15) Motion to cancel the assessment, filed September 16th by these objectors. (Printed Record, 16.)

(16) Amended objections filed by these objectors. (Printed Record, 22.)

(17) Similar amendment of motion to dismiss. (Printed Record, 23.)

(18) Legal objections (as distinguished from questions of benefits which are for the jury) sustained by the County Court, April 27, 1897. (Record, 23.)

(19) Appeal by petitioners to the Illinois Supreme Court. (Printed Record, 24.)

(20) Decision in the Illinois Supreme Court reversing and remanding. (Printed Record, 25; 171 Ill., 146.)

(21) Petition for rehearing in the Supreme Court denied. (171 Ill., 146.)

(22) Case remanded to the County Court and reinstated. (Printed Record, 25.)

(23) Additional objections filed *nunc pro tunc*. (Printed Record, 25.)

(24) Stipulation allowing objectors to file still further objections, they also waiving a jury and submitting all questions to the court. (Printed Record, 27.)

(25) Additional objections filed and further motion to dismiss. (Printed Record, 28.)

(26) Hearing on evidence:

Objections overruled by the court.

Motion to dismiss overruled by the court.

Motion to recast the assessment overruled.

Evidence as to benefits heard.

Finding by the court (jury waived) that objectors had received benefits to amount of assessment, and that their property was not assessed more than its due proportion. Objections overruled. (Printed Record, 32.)

(27) Motion for new trial (not involving any federal question) overruled. (Printed Record, 32.)

(28) Judgment of confirmation. (Printed Record, 31.)

(29) Appeal prayed and allowed to Illinois Supreme Court. (Record, 33.)

Order permitting substitution of parties defendant on motion of these objectors. (Printed Record, 34.)

(30) Bill of exceptions signed by the court preserving evidence as to benefits not printed in the record. (See index to Printed Record showing omissions.)

(31) Assignments of error in the Illinois Supreme Court. (Record, 71.)

(32) Argument and hearing in the Supreme Court. (181 Ill., 136.)

(33) Decision affirmed in the Supreme Court. (181 Ill., 136.) (Printed Record, 77.)

This assessment has been before the Supreme Court of Illinois, on appeals by various parties, no less than seven times, as follows:

(1) *Culver* v. *People*, 161 Ill., 89.

(2) *Farrell* v. *Town of West Chicago*, 162 Ill., 280.

(3) *Connor* v. *Town of West Chicago*, 162 Ill., 287.

(4) *West Chi. Park Commrs.* v. *Farber*, 171 Ill., 146.

(5) *Cummings* v. *West Chi. Park Commrs.*, 181 Ill., 136.

(6) *Culver* v. *West Chi. Park Commrs.*, 182 Ill., 134.

(7) *Farrell* v. *West Chi. Park Commrs.*, 182 Ill., 250.

IN EACH AND EVERY STEP OF THIS PROCEEDING THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE PLAINTIFFS IN ERROR WERE CAREFULLY GUARDED BY DUE AND AMPLE PROCESS OF LAW.

There is one very remarkable paragraph in the brief of plaintiffs in error. It is as follows (brief, p. 40): "The present is a case by which the property of the plaintiffs in error is charged with a large public obligation by a whip-sawing process which can only be defended, if at all, by separating the questions into single propositions and considering each separately, as if independent, and then combining the results."

Barring the words "only," "whip-sawing" and "if at all," we admit the charge. It *is* a "public obligation," and it *can* be defended by separating the questions into single propositions and considering each separately, as if independent, and then combining the results." And the closer the analysis and the more careful the "consideration" that is given to each proposition, the more apparent will it be that our proceedings have violated no provision of the Constitution of the United states or any amendment thereof. We invite the most careful study of the Constitution of Illinois, of the statutes passed thereunder, of the ordinances of the West Chicago Park Commissioners, of the pleadings in the County Court, of the appeal to the Illinois Supreme Court, and of the careful and discriminating judgment there rendered. If in the whole course of the proceeding, during these seven years, these plaintiffs in error have been denied any constitutional right we have yet to have the defect definitely pointed out to us.

If, on the other hand, counsel wish to confuse this court with a jumble of talk about "oppression" or denial of "rights to the plaintiffs" we most respectfully beg to suggest that their objections are not capable of accurate definition, and amount to no more than general dissatisfaction with the results of the litigation. As Mr. Justice MILLER said in *Davidson* v. *New Orleans* (96 U. S., 97):

> "It would seem from the character of many of the cases before us and the arguments made in them, that the clause under consideration (14th amendment) is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him and of the merits of the legislation on which such decision was founded."

We believe the only federal question in this record concerns the fourteenth amendment.

We believe that no assessment proceedings violate the fourteenth amendment if due provision is made for adversary proceedings on the part of the owners taxed.

We believe that this record shows conclusively that such adversary proceedings were fully provided for and *had* in this case, and that these plaintiffs in error were fully and fairly heard, and the finding of fact as to benefits is binding on this court.

Can counsel state as briefly, or as definitely, any one or more objections to this assessment?

If they fear a careful analysis of the case, into the "separate questions" and "single propositions" entering into it, there must be some inherent weakness in their objections. A good case never fears the closest analysis.

III.

THE FORMER PROCEEDING WAS, IN FACT, A SPECIAL ASSESSMENT PROCEEDING, AND NOT A SPECIAL TAX PROCEEDING; BUT WHETHER THAT WAS A TAX OR AN ASSESSMENT MAKES NO SUBSTANTIAL DIFFERENCE NOW TO THE PLAINTIFFS IN ERROR.

THE PRINCIPAL DISTINCTION BETWEEN SPECIAL ASSESSMENT AND SPECIAL TAXATION HAS BEEN ABOLISHED IN ILLINOIS BY STATUTE OF 1895.

In this state, prior to 1895, there were two distinct methods in use for raising funds to pay for local improvements, namely, special ASSESSMENT and special TAXATION. In the former commissioners were appointed to distribute the cost according to benefits; in the latter the municipal authorities—acting in their legislative capacity—decided by what district the burden should be borne and the amount thereof, and their enactment was final. This was the state of the law when the case of *Kuehner* v. *City of Freeport* (143 Ill., 92), cited by counsel (brief, p. 18) was decided (1893). But in 1895 an amendment to the act governing special taxation was passed providing that "no special tax shall be levied or assessed against any property for any local improvement in an amount in excess of the special benefit which such property shall receive. Such ordinance shall NOT be deemed conclusive of such benefit, but the question of such benefit and the amount of such special tax shall be subject to the review and determination of the County Court and be tried in the same manner as in proceedings by special assessment."

Starr & Curtiss' Rev. Stat. Ill., Ed. 1896, page 748.

This amendment removed the substantial difference between special assessment and special taxation. Such was the law when the present petition was filed in the County Court. If there is any question whether this is an assessment proceeding, or a tax proceeding, it can now make no substantial difference to these plaintiffs in error.

Counsel does not contend that the *present* proceeding is for special tax, but rather that the former proceeding—the one that was found to be defective—was for collection of a tax. They refer with great particularity to the exact *language* of the court in entering orders in the former proceeding—"Special tax," "Specially taxed," "Special tax of ——— dollars" and the like. They also state that "no prayer was made in the (former) petition for any ascertainment or means of ascertaining the benefits." (Brief, page 7.) They also state (Brief, page 19), "Benefits, therefore, as the limit of charge to parcels of land, were disregarded; and this was the fatal element of the ordinance in *Norwood* v. *Baker*." Again they say (Brief, page 7): "There is language in the order of confirmation reciting that the commissioners appointed by the court to make the assessment did make such investigation, but it was not asked for in the petition nor provided for in the ordinance, and so, if made, which does not otherwise appear, it was the act of unauthorized persons, done contrary to the express requirements of the ordinance."

But while quoting so fully the *language* of the orders entered in the former proceeding (which was abandoned) they do not refer so pointedly to the *substance* of those proceedings, nor to either the language or substance of the *ordinance* (which was not abandoned). Even the

language of the orders is not quoted with *perfect* accuracy, for in the original the words "special tax" are not italicised as they appear to be in the quotation. In other words, the court did not put the stress on those words that counsel impute to them. Indeed, the word "tax" is used several times interchaugeably with assessment. Thus in order of confirmation, July 8, 1893 (Brief, 4; Printed Record 63) the language is "special tax or special assessment." And in the petition of 1893 we find the words "special tax or special assessment."

In the case wherein the first assessment was set aside the Supreme Court notices the careless use of the word "tax" appearing in the order of confirmation, for it says (161 Ill., at 95): "The judgment of confirmation orders that the special assessment, or, as it is therein called, the 'special tax,' be payable in installments." At every other place in the opinion the court uses the word "assessment" and not "tax."

If we look to the *substance* of that former proceeding counsel's criticism is still weaker, for commissioners were appointed as in cases of assessments—a thing which does not happen in cases of taxes. These commissioners assessed the benefits, an unheard of thing in cases of taxes; and objections of these very plaintiffs in error were heard by the County Court, which was not permitted under the law regarding taxes as it then stood.

But even if the former proceeding was a tax proceeding, and not an assessment, that is only one more reason why there should be a new assessment, and not an objection to the new assessment. If, as counsel claim, the

former proceeding was obnoxious to the supposed rule laid down in *Norwood* v. *Baker,* then we did wisely in abandoning the old court proceeding and levying a new assessment, as was done in the cases of *Spencer* v. *Marchant* (125 U. S., 345), and *Bellingham* v. *New Whatcomb* (172 U.S., 314), and the Village of Norwood has probably adopted the same course in paying for its improvement. We do not admit that the former proceeding *was* a special taxation merely because of the loose use of the word "tax" in one or two orders; nor do we admit that there was any lack of provision for the ascertaining of benefits as occurred in the Baker case; but even if there *had been* such defect that would be only a further and sufficient reason for levying a new assessment that would *not* be defective on that ground.

Looking at the ordinance, however, it will be seen that it is not *defective* in either language or substance. It provides that the cost of the improvement "shall be paid by special *assessment*" (the italics are ours) "in the manner provided by law." The law at that time provided that in making such special assessments commissioners should be appointed and a hearing had before the County Court as to the benefits; and there plaintiffs in error were then heard. They appeared and were present, introduced evidence and *were heard,—objected, and had their objections heard.*

But, again admitting, for the sake of the argument only that this was a special tax proceeding, and not a special assessment poceeding, the objection that the remedy provided by the Illinois law is not consistent with the rule laid down in the Baker case, is not well taken, because the Illinois legislature has now expressly provided that even in special tax cases there shall be a hearing as to benefits.

This amendment was enacted in 1895, before this petition was filed, and a full hearing was had in this case.

From the statement of counsel (Brief, 19) that "benefits, therefore, as a limit of charge to parcels of land, were disregarded," it would *seem* that counsel were not aware of this amendment of 1895. Indeed, in this same connection they seek to support their statement that hearing as to benefits was denied their clients by quoting from the Illinois statutes governing collection of delinquent taxes and assessments, as though it was a part of the statute governing the *levying* of such assessment, which is misleading. (Brief of Plaintiff in Error, pages 23 and 31.)

> "Section 39. Upon application for judgment upon such assessment no defense or objection shall be made or heard which might have been interposed in the proceeding for making of such assessment or the application for the confirmation thereof."

The "application for judgment" here mentioned is not the judgment of confirmation of the assessment roll, by which the assessment is confirmed, which is entered after full hearing as to the benefits; but it is the application that is made for sale of the land, after the assessment has been confirmed by the County Court, and after the collector has made his return that he has been unable to collect the same. The section quoted does not deny a hearing, but denies a SECOND hearing on the same questions. At the first hearing these objectors were represented, filed objections as to benefits, introduced evidence and were fully heard. The section quoted has not yet applied to this assessment, because the warrant has not yet gone to the collector, and he has not yet had an opportunity to return the lands as delinquent. When this court shall have affirmed the judgments of the Illinois

courts, and the collector shall be ordered to collect the assessment, and shall return the lands as "delinquent," then, and not till then, will the section quoted apply, and while a further hearing will then be granted these objectors, it will not be on the questions which have already been passed upon. That is all the section quoted means.

Why the plaintiffs in error feel so injured because they will never again have an opportunity to be heard on these objections which have been so thoroughly aired in the County Court, in the Supreme Court, and now in this court, we do not understand. (See Brief of Pl. in Er., 31.)

In the present proceeding, on the petition filed in 1896, the court has been more careful to avoid the criticism of counsel, for it avoided the use of the words "special tax," to which counsel seem to have such serious objection.

In this connection it may be well to note that, although counsel argue in one place that the appointment of the commissioners was unauthorized, and the "tax" was therefore void, yet in another portion of their brief they insist that the judgment of confirmation was so far binding as to preclude a second proceeding. They say (Brief, 41): "A prior adjudication reducing an assessment is a bar to an effort to charge the land further for the same improvement." We do not quite see how there could be an "adjudication" if the former proceedings, as they claim, were void.

But the foregoing, it is respectfully submitted, while it is a perfect answer to several objections raised, does not relate to any federal question. It was for the state court to determine whether it was a tax or an assessment—whether plaintiffs in error were entitled to a hearing or

not; and if the state court so construed their statute that due provision was made for a fair hearing on the questions they now raise, and they appeared and were heard, there is no "federal question" for this court to consider.

IV.

THE OBJECTION THAT THE ORDINANCE OF 1893 WAS WHOLLY VOID, BECAUSE DECLARED VOID IN PART, IS NOT SUSTAINED BY THE GENERAL RULES FOR CONSTRUCION OF STATUTES AND ORDINANCES, NOR BY THE DECISIONS OF THE ILLINOIS COURTS CONCERNING THIS PARTICULAR ORDINANCE, AND IT RAISES NO FEDERAL QUESTION.

Counsel complain that by the law of Illinois no assessment can be made without a prior valid ordinance; and that this ordinance was and had been declared void; that therefore, the assessment was void.

We answer,

First. The ordinance was not wholly void.

Second. The ordinance has not been *declared* wholly void.

Third. The ordinance *has* been declared valid in part.

Fourth. This court will not review that decision, but will merely consider whether, under that construction, due process of law is denied.

Fifth. The ordinance and law as applied, provided ample opportunity for a full hearing, which was had, and not denied, and therefore, no federal question concerning due process of law is involved.

It has long been settled in Illinois, in accordance with

the general principles applied elsewhere concerning construction of statutes and ordinances, that the invalidity of one part of an act or ordinance does not invalidate the rest of it, if the several portions may be separated.

Thus in *White* v. *Alton* (149 Ill., 626), there was an objection that by the ordinance for a local improvement it was provided, that one part of the cost should be levied upon a street railway by special taxation, and the balance should be assessed against the lands benefited as a special assessment. The tax was held void, but the balance was enforced. The court said:

> "It is claimed that the ordinance is void as to the levy against the horse railway company, and being void as respects that property, it is also void as respects the property of appellants. We do not concur in that view. A question of this character arose in *Wilbur* v. *City of Springfield* (123 Ill., 402), and it was there held to be a well settled principle, applicable to by-laws and ordinances, that if the provisions relating to one subject-matter be void, and as to another they be valid, and the two are not necessarily or inseparably connected, they may be enforced as to the valid portion as if the void portion had been omitted."

As regards statutes, the Illinois constitution expressly provides, that while the subject of an act must be expressed in its title, yet "if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. (Ill. Const., 1870, Art. 4; Sec., 13.)

Indeed, it is a general rule that, "part of a statute may be unconstitutional and void, and the residue constitutional and valid." (23 Eng. & Am. Cyc. Law, 225.) And by the same reasoning it will be seen, that part of an *ordinance* may be valid even though another, disconnected, part has been declared void.

The United States Supreme court has applied this doctrine directly to the construction of an ordinance in the case of *Keokuk Co.* v. *Keokuk* (95 U. S., 80.) An ordinance of Keokuk imposing wharfage fees was in question. The court, speaking of that *ordinance,* says:

> "Statutes that are unconstitutional in part only, will be upheld so far as they are not in conflict with the constitution, provided the allowed and prohibited parts are severable."

But not only *should* this particular ordinance be held valid in those parts that direct the levying of an assessment, but it *has been* so held by the Illinois Supreme Court.

In its opinion in *Farber* v. *West Chicago Park Commissioners,* 171 Ill., at 153, where this identical ordinance was under consideration, the court said:

> "When it becomes necessary to make a re-assessment, not because of any irregularity in the passage of the ordinance or because it fails to sufficiently describe the improvement, but solely because in a distinct section it attempted to levy the assessment in an illegal *mode,* we see no reason why the valid portions of the ordinance may not be treated as still in force, and made the basis of a proceeding for a new levy. We must hold, that only Section 2 of the original ordinance was invalid, that the ordinance furnished a proper basis for a new proceeding, and that work done and completed under such ordinance, was not done under an ordinance wholly void, so that no power remained to pay for it by special assessment."

See also,

Davis v. *City of Litchfield,* 155 Ill., 384.

The language above quoted, was taken from a prior decision of the same court in *Freeport Street R. R.* v.

Freeport, 151 Ill., 451. In that case there was under consideration, a re-assessment against the Street Railroad, of that part of an assessment which was declared void in *Kuchner* v. *Freeport,* 143 Ill., 92, cited by counsel for plaintiffs in error. That ordinance, declared void when the *mode of collection* was considered, was still valid as a basis for an assessment in the *proper mode.*

Applying the foregoing principles to the case at bar we find, that our ordinance of 1893 provided, in two separate sections, for two things: The first section provided, that the improvement should be made by special assessment. The second section provided, that the assessment should be divided into installments.

The Illinois courts have held, that the first section was valid, and authorized the doing of the work and the collection of *an* assessment therefor; they held the second section void, however, and therefore that particular assessment, levied in that illegal manner (the first one), was void; but they also held, that the new assessment made in the proper manner, was not void.

In other words, it was the court proceeding that was void, the mere *levying* of the assessment, and not the ordinance providing that it *should be* levied. It was the kind of judgment that was illegal, and not the ordinance providing that there should be a judgment. It is as if the park commissioners had directed an assessment proceeding, and the court had rendered a judgment of condemnation, or as if a plaintiff had sought a money judgment on promissory notes, and the court had decreed him entitled to an annuity.

There were valid parts of the ordinance sufficient to warrant the special assessment even after the supposed

condemnation decree had been declared void. As a condemnation ordinance it was void; as an installment ordinance it was void; but it was not void as an assessment ordinance, without installments. It was that *part* of the ordinance which provided for installments that was invalid, and not the *ordinance* as a whole. The whole apparent force of the arguments of plaintiffs in error on this point comes from the frequent repetition of the words, "void ordinance," and overlooking the fact that it was but a *part* of the ordinance that was void.

Whether the Illinois Supreme Court gave the proper construction to that ordinance, or not, is not a federal question. The only federal question that will be here considered is this: "Did that ordinance, as construed by the Illinois court, deprive the plaintiffs in error of any rights, privileges or immunities, guaranteed to them by the 14th Amendment; or did that construction of the ordinance, and the law, give them 'due process of law,' and a full and fair hearing, on the merits?" If such hearing was accorded, the ordinance was not unconstitutional.

V.

NO NEW RIGHT WAS CONFERRED BY THE PARK ACT OF JULY 1, 1895. THAT ACT PROVIDED A PROCEDURE ONLY.

Plaintiffs in error urge in several parts of their brief, that "The act of 1895, assuming to confer authority to pass a new ordinance, is in conflict with the Constitution of the United States." (Brief, 20.) That the Park Act of 1895 is "in conflict with the Fourteenth Amendment." That the "defects in the first ordinance were incapable of being cured by a retroactive law." (Brief, 53.)

We answer to this, first, "no new right was conferred by the Park Act of 1895. That act provided a procedure only."

We quote the foregoing from page 22 of the brief, filed by the plaintiffs in error in the Supreme Court of Illinois. We trust they will not deny either the accuracy of the quotation, nor the soundness of the statement of law. It is their own statement.

The *right* or *power* to collect an assessment, was in existence from the moment that ordinance was passed, but the method of enforcing that right was somewhat changed. Before the act, the West Town Authorities were designated as the only persons or corporation to file the petition; after that act the West Chicago Park Commissioners might take their places as petitioners. It is as if Mr. Davis, of Idaho, had been sentenced to be hanged by the sheriff of the county, and the legislature had then passed an act providing, that all executions of the death penalty should take place under the management of the worden of the penitentiary. This court has recently held that the sentence should be enforced, notwithstanding the change in the officer whose duty it was to execute it. This case has not yet been reported. So here, it can make no possible difference to these objectors who filed the petition, so long as they had a fair hearing on the merits, and that they have had.

This point was carefully considered in *West Chicago Park Commrs.* v. *Farber,* 171 Ill., 146, at 156.

Our scond answer is, that *without* the act of 1895, there was power to levy a new assessment in case the first assessment is set aside by any court. This is found in Article IX of the Cities and Villages' Act,

adopted by the Park Act of 1873, for the collection of special assessments for Park Purposes. What the amendment of 1895, really did, was to permit (but not command), the substitution of the West Chicago Park Commissioners as petitioners, instead of the "West Town Authorities." This paragraph is quoted at length at the end of this brief (with the other statutes relating to this case), and is mentioned in brief for plaintiffs in error at page, 48, where it is said, to have no application to parks or park boards or town authorities. But, inasmuch as the whole procedure of this "city and village act" for collection of assessments, was expressly adopted by Park Act of 1873, for the collection of Park assessments, we must earnestly insist that it did apply to park boards.

Starr & Curtis' Rev. Statutes, Ed., 1896, p. 775.

Our third answer to this objection is, that our ordinance of 1893, was not *defective,* there was nothing *lacking,* or *wanting;* the objection to it was, that it was redundant; there was too much, and it was the redundancy that was invalid. Take away the invalid surplusage, and you have taken away no "vital" part of the ordinance. The remaining parts contain all the necessary and usual provisions of a good ordinance for a special assessment.

If it had been originally passed in that form, or if the invalid part had been ignored by the County Court, there would have been no "defect" discoverable. But, instead of ignoring the invalid part, and clinging to the valid part, the County Court, as it were gave a judgment in ejectment on a bill for partition, and the Supreme Court held the judgment void.

Our fourth answer is, that this objection does not relate to the 14th Amendment, but to the provision concerning *ex post facto* laws, found in Section 10 (first), of Article 1 of the Constitution, which article and section have not been mentioned in any objections or motions in the County Court, nor in any assignments of error either in the Illinois Supreme Court or in this court. It may be that the "due process of law" clause, will some day be so construed as to cover all the constitutional defects that can be discovered in a court proceeding, such as impairment of the obligations of contract, or the laying imposts or export duties; but as heretofore construed, the passing of *ex post facto* laws, has not been held to be a violation of the 14th Amendment, but of Article 8, Section 10, paragraph first; and the raising of one federal question in the court below, will not warrant the raising of another and different federal question on appeal to this court.

Dewey v. *Des Moines*, 173 U. S., 193.
Clarke v. *McDade*, 165 U. S., 168.
Keokuk Bridge Co. v. *Illinois*, 175 U. S., 626.

VI.

CONCLUSION.

In conclusion we submit to the court:

First. That no federal question is properly before the court.

Second. That this court will not undertake to correct errors in respect to mere details of special assessments if the state court has given a fair hearing to the parties assessed.

Third. That whether the former invalid assessment for this improvement was a tax or an assessment, is not a federal question; and that in either event this assessment is valid.

Fourth. That the ordinance for the improvement was and is valid, even though the clause providing for installments was invalid.

Fifth. That the Park Act of 1895, violated no provision of the United States' Constitution, for it was merely remedial; and even if it did violate that constitution, the objection was not properly raised either below or in this court.

Sixth. That the objectors had their full and complete measure of "due process of law" when the County Court found that their property had "not been assessed more than it had been specially benefited, and that said assessment roll should be confirmed," and they cannot now deny that they have enjoyed all the "rights, privileges and immunities" to which they were entitled under the Constitution of the United States.

Seventh. That after the repeated and exhaustive hearings, upon all the objections on behalf of plaintiffs in error, that ingenious counsel have been able to invent, in the tribunal established by the constitution and laws of Illinois, clothed with special jurisdiction of the whole subject of assessments and taxes, there can remain no question for the review of this court under the fourteenth amendment to the Constitution of the United States, or under Section 709 of the Judiciary Act of Congress.

Copies of Statutes.

For ready reference, the two ordinances of the park authorities are here printed, with the provisions of the Illinois Constitution and Statutes concerning special assessments.

CONSTITUTION OF ILLINOIS. ART. IX, SEC. 9.

ASSESSMENTS.

Section 9. The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property or otherwise. For all other corporate purposes all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

CONSTITUTION OF ILLINOIS. ART. VI, SEC. 18.

COUNTY COURTS.

County Courts shall be courts of record, and shall have original jurisdiction in all matters * * * for the collection of taxes and assessments and such other jurisdiction as may be provided for by general law.

Act of 1873.

(S. & C. Rev. Stat., Ed. of 1896, page 2864 ff.)

32. Proceedings for Park Improvements. § 3. In case such board of park commissioners shall desire to improve any boulevard or pleasure way under their control, or any part thereof, or if such commissioners shall deem it necessary, for drainage purposes, to construct a sewer or sewers through any lands or streets not under their control, to connect with any natural or artificial outlet, they shall make plans and specifications for such contemplated improvement. In case such contemplated improvement is the construction of a sewer, they shall carefully designate the line thereof, and shall prepare estimates of the cost of such contemplated improvement, and transmit such plans, specifications and estimates to the corporate authorities of the town where such improvement will be situated. Such corporate authorities may, upon the receipt of such plans, specifications and estimates, at their next meeting, whether the same be a regular or special meeting, or at any succeeding meeting, or at a special meeting called for that purpose, determine by ordinance, to be entered upon the records of such town, whether such improvement shall be made or not; if they shall determine to make the same, they shall also prescribe that the same shall be made by special assessment or special taxation of contiguous property: provided, that the tax authorized by section 1 of this Act shall not exceed the sum of $100,000 annually. If such ordinance shall provide that such improvement shall be wholly or in part made by special assessments, they shall direct the supervisor of such town

to file a petition in the name of the town, in the county court of his county, for proceedings to assess the cost of such improvement; such petition shall recite the ordinance for the proposed improvement and the plans, specifications and estimates of the cost thereof, and pray that the cost thereof may be assessed in the manner prescribed by law. The proceedings to levy and collect such assessment subsequent to the filing of such petition, shall in all things, as near as may be, conform to the provisions of article nine(9) of an Act of the General Assembly of this State, entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, and all of the provisions of said article 9, so far as applicable, shall be in force and apply to any assessment made under this Act. The clerk of such town shall perform the duties and possess the powers which are conferred upon the clerks of cities and villages under said article 9: PROVIDED, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer: PROVIDED, FURTHER, that no sewer shall be constructed under this Act through any streets belonging to any incorporated city, or to connect with any sewers within such city, unless the assent of the common council or board of public works of such city having control of the streets and sewers of such city shall be first obtained thereto.

33. WHO ARE CORPORATE AUTHORITIES. § 4. BE IT FURTHER ENACTED, that the town supervisor, clerk and assessor of such town he and they are hereby designated and constituted the corporate authorities of such

town, and they, or a majority of them, may levy the tax or any of the assessments herein authorized, in the manner and for the purposes herein provided, except in towns or villages which may have, or which shall hereafter become organized as a town or village, under any law of this state, in which case the board of trustees of such town, so organized as a village, may levy the tax, or any of the assessments herein authorized, in the manner and for the purposes herein authorized.

Act of 1895.

(S. & C. Rev. Stat., Ed. 1896, 2907, ff.)

171. Special Assessments—Special Taxes. Be it enacted by the people of the State of Illinois, represented in the general assembly: § 1. That all and any boards of park commissioners or park authorities now existing or hereafter established for the purpose of locating, establishing, inclosing, improving or maintaining any public park, boulevard, driveway, highway or street, are hereby vested with power and authority to levy, assess and collect special assessments or special taxes on contiguous property, or general taxes, or both, or otherwise, for the purpose of improving any boulevard, highway, driveway or street which may be now or may hereafter come under their control in any manner whatsoever.

172. Powers Additional to Others. § 2. The power and authority hereby vested are hereby declared to be additional to and not in limitation of any power and authority heretofore vested in said park commissioners or park authorities.

173. Ordinance. § 3. Whenever any such improvement shall be determined upon by said park commissioners or park authorities, they shall provide for the same by ordinance to be entered upon their records, and they shall by the same ordinance prescribe whether the same shall be made by special assessment or by special taxation on contiguous property, or general taxation, or both, or otherwise.

174. SPECIAL ASSESSMENTS—PROCEEDINGS. § 4. When the ordinance under which said improvement is ordered to be made shall provide that such improvement shall be made by special assessment, the proceedings for the making and levying of the same shall be as provided hereinafter in this act.

175. CHARACTER, ETC., OF IMPROVEMENT. § 5. Such ordinance providing for said improvement shall specify the nature, character, locality and description of such improvement.

176. ESTIMATE OF COST. § 6. The said park commissioners or park authorities shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials and all other expenses attending the same, and the cost of making and levying the said assessment, and shall enter a report thereof upon their records.

177. ORDER FOR PROCEEDINGS IN COURT. § 7. Upon such ordinance being passed and said report made and recorded as aforesaid, said park commissioners or park authorities may order a petition to be filed by its secretary or such other officers as it may direct in the County Court of their county for proceedings to assess the costs of such improvements in the manner provided herein.

178. PETITION. § 8. Said petition shall be in the name of said park commissioners or park authorities, and shall recite the ordinance for the proposed improvement and such report of estimate of the cost thereof, and shall pray that the cost of such improvement shall be assessed in the manner provided by law.

179. ASSESSMENT. § 9. Upon the filing of such petition it shall be the duty of said commissioners or park authorities to estimate what proportion of the total cost of said improvement will be of benefit to the public and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the district, subject to the maintenance of the park or parks under the control of said commissioners or park authorities, so that each shall bear its relative, equitable proportion, and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: PROVIDED, no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited.

180. ASSESSMENT ROLL. § 10. The said commissioners or park authorities shall also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto, and in which they shall set down as against the said park district the amount they shall have found as public benefit, and they shall certify such assessment roll to the said court at least ten days before the first day of the term at which a final hearing thereon shall be had.

181. CITY SPECIAL ASSESSMENT LAWS APPLICABLE. § 11. The remainder of the proceedings in respect to such special assessment shall be in accordance with Article IX. of the act of the general assembly, entitled, "An Act to provide for the incorporation of cities and villages,"

approved April 10, 1872, and all acts amendatory thereof, so far as the same may be applicable, and all acts provided therein to be performed by the city or village shall be performed by the said park commissioners or park authorities, and all acts provided therein to be performed by commissioners to be appointed by the court shall also be performed by said park commissioners or park authorities, and where it is therein provided that the city council, or the board of trustees, in case a village, shall be named in any of said proceedings or notices or records relating thereto, the said park commissioners or park authorities shall be named instead, and like notices of said proceedings shall be given and published by said park commissioners as is therein provided, and an affidavit of one or more of said park commissioners or park authorities of the giving of notices, and a certificate of publication of notice be filed as provided therein, and the same time shall be allowed for the filing of objections to the confirmation on the part of parties interested.

182. HEARING. § 12. In such proceedings the court shall have the same powers and authority as is provided in said Article IX for proceedings thereunder, and the hearing of the application for the confirmation of said assessment shall be had in the same manner and appeals from any judgment entered thereon shall be taken to the same court and in the same manner as provided therein.

183. COLLECTION OF SPECIAL ASSESSMENT. § 13. The said assessment roll and judgment thereon shall be certified to the officer of said park commissioners or park authorities authorized to collect said special assessment in the same manner as is provided in said Article IX., and a

like notice shall be given by said collector, and said special assessment shall be collected in the same manner as provided therein, and a like report of delinquent list made to the general officer of the county authorized to collect state and county taxes, made up in the same manner as is provided therein.

184. Application for Judgment—What Laws Govern. § 14. Said general officer shall proceed to obtain judgment for said delinquent special assessment in the same manner and within and at the same time as is provided in said Article IX., and shall be governed by the same laws in respect thereto as is provided for therein.

185. Sales. § 15. Sales of property for unpaid delinquent special assessments shall be made in the same manner as provided by said Article IX., and redemption from said sales shall be made in the same manner and upon the same terms and payment of the same rates as are applicable to sales therein provided for, and officers respectively making collections of said special assessment, and making sales thereunder, shall be subject to the same rules, regulations, be entitled to the same compensation and subject to the same penalties as is provided for in said Article IX.

186. Park Commissioners May Buy in. § 16. Park commissioners or park authorities interested in the collection of any tax or assessment may become a purchaser at any sale of real or personal property to enforce the collection of the same, and may, by ordinance, authorize and make it the duty of one or more officers, to be designated by them, to attend such sales and bid thereat in behalf of said park commissioners or park authorities.

187. SUPPLEMENTAL ASSESSMENTS. § 17. New special assessments and supplemental special assessments may be levied and assessed in all cases where the same are, or may be, authorized in said Article IX., and the same shall be levied, assessed and collected as is above provided in cases of original special assessments, and all the provisioning of said Article IX. for said new assessments and supplemental assessments shall apply to such proceedings to be taken hereunder.

188. CONTRACTS. § 18. All the provisions of said Article IX. in respect to contracts for making any such improvement, and for the letting of such contracts, and in respect to the lien of said special assessments, and as to the collection by suit of said special assessments, the dividing the same into installments, and interest thereon, and the collection thereof, the payments thereon, the notice thereof, the confirmation thereof, and the payment of work done for such improvement, vouchers therefor and rights of all parties thereunder, the disposition of surplus moneys arising from such special assessments, and the payments for compensation in condemnation proceedings, and advancements to pay for private property taken or damaged from the general fund of such city or village, shall each and all be applicable to such proceedings taken by said park commissioners or park authorities.

189. CONDEMNATION PROCEEDINGS—SPECIAL ASSESSMENT. § 19. Wherever any such park commissioners or park authorities shall be vested with power to take or damage private property for any purpose whatever, and shall apply to any court for the purpose of making just compensation therefor, they may file in the same proceedings a supplemental petition praying for a special as-

sessment for the purpose of raising the amount necessary to pay the compensation and damages which may be or shall have been awarded for the property taken or damaged, with the costs of the proceedings, and thereupon the court shall have power to and shall proceed as in other cases of special assessment provided for in said Article IX, and herein: PROVIDED, that all the provisions of said article in reference to the payment for lands to be taken or damaged, and the hearing by the court in respect to said payment, and in respect to ordering writs of possession or in dismissing such condemnation proceedings, shall be applicable in such case.

190. NEW ASSESSMENTS. § 20. Where, in any case such park board or park authorities having authority to improve any street or streets, or parts thereof, and to pay for the improvement thereof by special assessment, and said improvement shall have been made or partly completed, and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment for said improvement by special assessment shall have failed or been declared void by any court of competent jurisdiction, then, and in any such case, the said park commissioners or park authorities are hereby vested with power to levy, assess and collect a new special assessment on property benefited by said improvement or completed portion thereof, in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvement or the completed portion thereof, shall each severally be liable to pay for said benefits to the same extent and in the same proportion as in other cases: PROVIDED, that

the provisions and all proceedings in respect to such new assessments shall relate to and be in force in all cases in which, at the time of the passage of this act, work has been completed or partially completed under any special assessment proceedings or attempted special assessment proceedings heretofore levied or collected or attempted to be levied and collected by any such board of park commissioners or park authorities: AND, PROVIDED FURTHER, that such new assessments in such cases shall be levied within seven years from the date of confirmation, or attempted confirmation, of such original proceedings.

191. ALLOWANCE OF CREDITS. § 21. In such proceedings for any new assessment, it shall be the duty of the said commissioners to credit on the assessment roll, at or before filing the same in court, all payments that may have been made on any previous assessment or installments thereof for said improvement by, for or on account of any lot, block, tract or parcel of land assessed therein, whether paid by sale thereof or otherwise, and any objections to the confirmation of such assessment roll shall include objections to the allowance of credits as appears by said assessment roll, if any there be.

192. LEVY, ASSESSMENT AND COLLECTION — HOW MADE. § 22. When the ordinance under which said improvements are ordered to be made shall provide that such improvement shall be made by special taxation of contiguous property, the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments.

ARTICLE IX. OF THE CITIES AND VILLAGES ACT.
(Rev. Stat., 736, ff.)

117. POWERS CONFERRED. § 1. That the corporate authorities of cities and villages are hereby vested with power to make local improvements by special assessment or by special taxation, or both, of contiguous property, or general taxation, or otherwise, as they shall by ordinance prescribe.

118. ORDINANCE AUTHORIZING IMPROVEMENTS—CONTENTS. § 2. When any such city or village shall, by ordinance, provide for the making of any local improvement, it shall, by the same ordinance, prescribe whether the same shall be made by special assessment or by special taxation of contiguous property, or general taxation, or both.

133. SPECIAL TAX, HOW COLLECTED. § 17. When said ordinance under which said local improvement shall be ordered shall provide that such improvement shall be made by SPECIAL TAXATION of contiguous property the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments; * PROVIDED, that no special tax shall be levied or assessed upon any property to pay for any local improvement in an amount in excess of the special benefit which such property shall receive from such improvement. Such ordinance shall not be deemed conclusive of such benefit, but the question of such benefit and of the amount of such special tax shall be subject to the review and determination of the County Court, and be tried in

the same manner as in proceedings by special assessment."

(NOTE.— Amendment of 1895 added the part after asterisk.)

134. HOW MADE. § 18. When the ordinance under which said local improvement is ordered to be made shall provide that such improvement shall be wholly or in part made by special assessment, the proceedings for the making such special assessment shall be in accordance with the sections of this act (article) from 18 to 51, inclusive.

135. ORDINANCE FOR LOCAL IMPROVEMENTS—SIDEWALKS—OWNERS' RIGHTS. § 19. Whenever such local improvements are to be made wholly or in part by special assessment, the said council in cities, or board of trustees in villages, shall pass an ordinance to that effect, specifying therein the nature, character, locality and description of such improvement, either by setting forth the same in the ordinance itself or by reference to maps, plats, plans, profiles or specifications thereof on file in the office of the proper clerk, or both: PROVIDED, that whenever any such ordinance shall provide only for the building or renewing of any sidewalk, the owner of any lot or piece of land fronting on such sidewalk shall be allowed fifteen days after the time at which such ordinance shall take effect in which to build or renew such sidewalk opposite his land, and thereby relieve the same from assessment: PROVIDED, that the work so to be done shall in all respects conform to the requirements of such ordinance.

136. COMMISSION TO ESTIMATE COST. § 20. The city council or board of trustees shall appoint three of its mem-

bers, or any other three competent persons, who shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the assessment, and shall report the same in writing to said council or board of trustees.

137. REPORT—APPROVAL—ORDER FOR PETITION.—§ 21. On such report being made, and approved by the council or board of trustees, as the case may be, it may order a petition to be filed by such officer as it shall direct, in the County Court of its county, for proceedings to assess the cost of such improvement in the manner provided in this act.

138. PETITION BY MUNICIPALITY — CONTENTS. § 22. The petition shall be in the name of the corporation, and shall recite the ordinance for the proposed improvement and the report of such commission, and shall pray that the cost of such improvement may be assessed in the manner prescribed by law.

139. APPOINTMENT OF COMMISSIONERS — OATH. § 23. Upon the filing of such petition the court shall appoint three competent persons as commissioners, who shall take and subscribe an oath, in substance as follows:

STATE OF ILLINOIS, } ss.
———— COUNTY. }

We, the undersigned, commissioners, appointed by the County Court of ..... County, to assess the cost of ..... (here state in general terms the improvement), do solemnly swear (or affirm, as the case may be), that we will a true and impartial assessment

make of the cost of said improvement upon the city (or village) of ....., and the property benefited by such improvement, to the best of our ability, and according to law.

140. DUTY OF COMMISSIONERS—ASSESSMENT OF BENEFITS. § 24. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land that will be specially benefited thereby, and to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: PROVIDED, that no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited: AND, PROVIDED, FURTHER, that it shall not be necessary for said commissioners to examine the locality except where the ordinance provides for the opening, widening or improvement of streets and alleys.

141. MAP. § 25. (Repealed by L. 1873, p. 66, April 25, July 1.)

142. ASSESSMENT ROLL—RETURN. § 26. They shall also make or cause to be made an assessment roll, in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto,

and in which they shall set down as against the city or village the amount they shall have found as public benefit, and certify such assessment roll to the court by which they were appointed, at least ten days before the first day of the term at which a final hearing thereon shall be had.

143. NOTICE OF ASSESSMENT BY MAIL—POSTING AND PUBLICATION. § 27. It shall also be the duty of such commissioners to give notice of such assessment, and of the term of court at which a final hearing thereon will be had, in the following manner:

First. They shall send by mail to each owner of premises assessed, whose name and place of residence is known to them, a notice substantially in the following form:

Mr. ..... Your (here give a short description of the premises) is assessed $..... for public improvement. The assessment roll will be returned to the ..... term of the ..... court of ..... County (here give date).

....
Commissioners.

Second. They shall cause at least ten days' notice to be given, by posting notices in at least four public places in such city or village, two of which shall be in the neighborhood of such proposed improvement; and when a daily newspaper is published in such city or village, by publishing the same at least five successive days in such daily newspaper, or if no daily newspaper is published in such city or village, and a weekly newspaper is published there, then at least once in each week for two successive weeks, in such weekly newspaper, or if no daily or weekly newspaper is published in such city or village, then at least

once in each week for two successive weeks in a newspaper published in the county in which such city or village is situated. The notice may be substantially as follows:

SPECIAL ASSESSMENT NOTICE.

Notice is hereby given to all persons interested that the city council (or board of trustees, as the case may be), of ..... having ordered that (here insert a brief description of the nature of the improvement), the ordinance for the same being on file in the office of the ..... clerk, have applied to the ..... Court of ..... County for an assessment of the cost of said improvements, according to benefits, and an assessment thereof having been made and returned to said court, the final hearing thereon will be had at the ..... term of said court, commencing on .... day of ....., A. D. 18.. All persons desiring, may then and there appear and make their defense.

(Here give date.)

.....
Commissioners.

144. PROOF OF NOTICE. § 28. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent or caused to be sent by mail, to the owners whose premises have been assessed, and whose name and place of residence are known to them, the notice hereinbefore required to be sent by mail to owners of premises assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notices required by this act to be posted, setting forth when and in what manner the same were posted. Such affidavit shall be received as

prima facie evidence of a compliance with this act in regard to giving such notices. They shall also file a certificate of publication of said notice in like manner as is required in other cases of publication of notices.

145. CONTINUANCE WHEN NOTICE NOT IN TIME. § 29. If ten days shall not have elapsed between the first publication or the putting up of such notices and the first day of the next term of such court, the hearing shall be continued until the next term of court.

146. OBJECTIONS TO REPORT—DEFAULT. § 30. Any person interested in any real estate to be affected by such assessment, may appear and file objections to such report, and the court may make such order in regard to the time of filing such objections as may be made in cases at law in regard to the time of filing pleas. As to all lots, blocks, tracts and parcels of land to the assessment of which objections are not filed within the time ordered by the court default may be entered, and the assessment confirmed by the court.

147. HEARING—FURTHER EVIDENCE—JURY. § 31. On the hearing, the report of the commissioners shall be competent evidence, and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, and if it shall appear that the premises of the objector are assessed more or less than they will be benefited, or more or less than their proportionate share of the cost of improvement, the jury shall so find, and also find the amount for which such premises ought to be assessed, and judgment shall be rendered accordingly.

148. TRIAL AT LAW OR PROBATE TERM—PRECEDENCE. § 32. The hearing in all cases arising under

this act may be had at either a law or a probate term of said court, and shall have precedence over all cases in such court except criminal cases.

149. ASSESSMENT MODIFIED, RECOMMITTED OR ANNULLED. § 33. The court before which any such proceeding may be pending, shall have authority, at any time before final *adjournment* (judgment), to modify, alter, change, annul or confirm any assessment returned, as aforesaid, or cause any such assessment to be recast by the same commissioners whenever it shall be necessary for the attainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed, for the purpose of making such assessment, or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

150. JUDGMENT SEVERAL—APPEAL—LIEN. § 34. The judgment of the court shall have the effect of a several judgment as to each tract or parcel of land assessed, and any appeal from such judgment or writ of error shall not invalidate or delay the judgment, except as to the property concerning which the appeal or writ of error is taken. Such judgment shall be a lien upon the property assessed, from the date thereof until payment shall be made.

162. VACATION OF ASSESSMENT—NEW ASSESSMENT. § 46. If any assessment shall be annulled by the city council or board of trustees, or set aside by any court, a

new assessment may be made and returned, and like notice given and proceedings had, as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or board of trustees and court shall perform like duties and have like power in relation to any subsequent assessment, as are hereby given in relation to the first assessment.

163. SUPPLEMENTAL ASSESSMENTS. § 47. If, in any case, the first assessment prove insufficient, a second may be made in the same manner, as nearly as may be, and so on, until sufficient moneys shall have been realized to pay for such public improvement. If too large a sum shall, at any time, be raised, the excess shall be refunded ratably to those by whom it was paid.

AMENDMENT OF 1887 AS AMENDED IN 1891. . .
(S. & C. Rev. Stat., 1896, 781, ff.)

170 a. SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS MAY BE PAID IN INSTALLMENTS. § 55. That the amount of any special assessment for any local improvement in any city, incorporated town or village may be divided into installments, when so provided for by the ordinance providing for the said improvement, the first of which shall not exceed the sum of twenty-five per cent. of the total of said assessment, and which shall be due and payable from and after confirmation of said assessment. The remaining portion of said assessment, after deducting the said first installment, shall be divided into four equal annual installments, which said installments shall be payable annually thereafter, and colected in the same manner that other assessments are now collected, and the annual interest, herein provided for, on all of said installments which may at any time remain unpaid, shall also be payable annually thereafter and collected in the same manner that other assessments are now collected. Each of said four last named installments shall bear interest at the rate of six per cent. per annum, payable in each year, from and after the first day of July next succeeding the confirmation of said assessment, when such confirmation shall be had between the first day of November and the first day of March; and when such confirmation is had between the first day of March and the first day of July, then each of said four last named installments shall bear interest at the rate of six per cent. per annum in each year, from and after the first day of October next succeeding such confirmation of assessment; and when such

confirmation is had between the first day of July and the first day of November, then each of said four last named installments shall bear interest at the rate of six per cent. per annum, from and after the first day of January next succeeding such confirmation of assessment. Such interest shall be payable in each year at the time when the installments are payable; PROVIDED, that in cities containing a population of fifty thousand or more this and the following sections shall not apply except in cases where any such special assessments shall exceed in the aggregate the sum of fifteen thousand dollars.

ILL. REVENUE ACT.

(S. & C. Rev. Stat., 3464.)

184. ADVERTISEMENT. § 182. At any time after the first day of April next after such delinquent taxes and special assessments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, in a newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this state to the county seat of such county. Said advertisement shall be once published at least three weeks previous to the term of the County Court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners if known, the total amount due thereon, and the year or years for which the same are due. Said collector shall give notice that he will apply to the County Court at the ..... term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the ..... Monday next succeeding the day fixed by law for the commencement of such term of the said County Court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the County Court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed

to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.

187. Application for Judgment—County Court—Term. § 185. That all applications for judgment and order of sale for taxes and special assessments on delinquent lands and lots shall be made at the June term of the County Court. If from any cause the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued, and it shall not be necessary to readvertise the list or notice required by law to be advertised before judgment and sale, but at the next regular term thereafter the court shall hear and determine the matter, and if judgment is rendered, the sale shall be made on the Monday specified in the notice as provided in section 182, such Monday to be fixed by the county collector in the notice. If for any cause the collector is prevented from obtaining judgment at said term, it shall be held to be legal to obtain judgment at any subsequent term of said court, but if the failure arises by the county collector's not complying with any of the requirements of this act, he shall be held on his official bond for the full amount of all taxes and special assessments charged against him: Provided, that any such failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to a rendition of a judgment against any delinquent lands or lots included in the application of the county collector:

AND, PROVIDED, FURTHER, that on the application for judgment at such subsequent term, it shall not be deemed necessary to set forth or establish the reasons of such failure: AND, PROVIDED, FURTHER, that in counties where probate courts have been or may hereafter be established, it shall be lawful to make such application for judgment and order of sale to the May term of the County Court.

188. PUBLICATION OF LIST—PAPERS FURNISHED COUNTY—PUBLISHER'S CERTIFICATE—FEE. § 186. The printer, publisher or financial officer or agent of the newspaper publishing the list of delinquent lands and lots, shall transmit, by mail or other safe conveyance, to the collector, four copies of the paper containing said list, to one of which copies he shall attach his certificate, under oath, of the due publication of the delinquent list for the time required by law (which copy shall be presented by the collector to the County Court at the time judgment is prayed), and said copy shall be filed as part of the records of said court. Upon receipt of said papers, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said list and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the auditor, and one copy to the state treasurer, who shall file and safely preserve them in their respective offices.

190. DELINQUENT LIST—FORM AND CONTENTS. § 188. The collector shall transcribe into a book prepared for that purpose, and known as the tax, judgment, sale, redemption and forfeiture record, the list of delinquent lands and lots, which shall be made out in numerical order, and contain all the information necessary to be re-

corded, at least five days before the commencement of the term at which application for judgment is to be made; which book shall set forth the name of the owner, if known; the proper description of the land or lot, the year or years for which the tax or special assessments are due; the valuation on which the tax is extended; the amount of the consolidated and other taxes and special assessments; the costs and total amount of charges against such land or lot. Said book shall also be ruled in columns, so as to show the amount paid before the rendition of the judgment, the amount of judgment, and a column for remarks, the amount paid before sale and after the rendition of said judgment, the amount of the sale, amount of interest or penalty, amount of cost, amount forfeited to the state, date of sale, acres or part sold, name of purchaser, amount of sale and penalty, taxes of succeeding years, interest and when paid, interest and cost, total amount of redemption, date of redemption, when deed executed, by whom redeemed, and a column for remarks, or receipt, of redemption money.

193. PROCEEDINGS IN COURT—ORDER FOR SALE. § 191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection), be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary matter, without pleadings, and shall pronounce judgment as the right of the case may be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of tax or spe-

cial assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown, why judgment should not be entered against said lands and lots for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the people of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having

been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned.

194. APPEALS. § 192. Appeals from the judgment of the court may be taken during the same term to the Supreme Court on the party praying an appeal executing a bond to the people of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment, and cost which may finally be adjudged against the real estate involved in an appeal by any court having jurisdiction in the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas, unless the party praying such appeal or desiring such a writ of error, shall before taking such appeal or suing out such writ of error, deposit with the

county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal or suing out a writ of error, the judgment shall be affirmed in whole or in part, the Supreme Court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent., and order that the amount deposited with the collector, as aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk of the Supreme Court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the Supreme Court, and to account for the same as collected taxes. If the judgment of the County Court shall be reversed and the cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, or a writ of error prosecuted with SUPERSEDEAS issued thereon, as herein provided, the clerk of the County Court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an addi-

tional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or representatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made.

Ordinance of Park Commissioners of 1893.

(Printed Rec., p. 41.)

An Ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the south-easterly line of Garfield Park (formerly known as Central Park) to the west line of Douglas Park, in the city of Chicago, town of West Chicago, County of Cook and State of Illinois.

Whereas, The West Chicago Park Commissioners have under their control a certain boulevard or pleasure-way known as Douglas boulevard, or Douglas Park Boulevard, lying and situate between the south-easterly line of Garfield Park (formerly known as Central Park) and running thence south for a distance of 4,250 feet, more or less, to a point in Sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its intersection with the west line of Douglas Park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago Park Commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, Said West Chicago Park Commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans,

specifications and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

WHEREAS, Said West Chicago Park Commissioners have made plans, specifications and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications and estimates of the cost of such improvement as provided by law; and

WHEREAS, Said board of West Chicago Park Commissioners have also submitted to the corporate authorities of the town of West Chicago, a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

WHEREAS, The corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land fronting on Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as provided by law;

NOW, THEREFORE, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago Park Commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces and all fresh

filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

SECTION 4. That the supervisor of the town of West Chicago proceed at once to file a petition in the name of the town in the County Court of Cook County for proceedings to assess the cost of the improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago Park Commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

Ordinance of 1896.

(Pr. Rec., 50.)

For a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the south-easterly line of Garfield Park (formerly known as Central Park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook, and State of Illinois.

Be it ordained by the West Chicago Park Commissioners in regular meeting assembled:

Sec. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the south-easterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the County Court of Cook County, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case No. 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said County Court above mentioned, and the provisions of said ordinance for the payment of said improvement have been heretofore, and on the 2d day of March, A. D. 1896, declared void by the Supreme Court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers and superintendence of work; now

Therefore, be it ordained:

Sec. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz.: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An Act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

Sec. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

Sec. 4. This ordinance shall be in force from and after its passage.

Respectfully submitted,

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Deft. in Error.

Supreme Court of the United States.

No. 160.—October Term, 1900.

J. L. Lombard, E. A. Cummings, W. H. Doble et al., Plaintiffs in Error, *vs.* The West Chicago Park Commissioners. } In error to the Supreme Court of the State of Illinois.

[April 8, 1901.]

The West Chicago Park Commissioners, in virtue of authority vested in them by the laws of the State of Illinois, proposing to improve Douglas boulevard, and requiring a special assessment to enable them to pay for the work, applied, as the law directed in such case, to the municipal authorities of West Chicago to cause such special assessment to be levied and collected according to law. In March, 1893, the town, acting on this request, adopted an ordinance providing for executing the work and for a special assessment on the abutting property to pay for the same. The only provision of this ordinance which it is essential to note for the purposes of the issues which are now before us is the second section thereof, which provided that the sum of the assessment when made should be payable in instalments, the first being twenty per cent. of the whole, and the deferred portions to bear interest at a rate fixed in the ordinance. Following the requirements of the State laws, after the passage of this ordinance application was made to the county court of Cooke County to take the necessary steps to execute the provisions of the ordinance. Pursuant to the directions of the Illinois statutes the court appointed commissioners, who examined and made a full report on the work, and exhibited an assessment roll stating the sum due by the abutting property; the amount assessed on each piece being stated to have been fixed in accordance with the benefits which it was ascertained would result to each piece from the performance of the contemplated work. After notice to those concerned to appear and urge objections, if any they had, to the assessment roll, and after due proceedings in which ample opportunity was afforded to resist the assessment, the court passed a decree of confirmation fixing the amount due by each piece of property in accordance with the report of the commissioners, and declaring that the sum assessed against each piece of property did not exceed the benefit conferred on the property. This decree, however, did not in all respects uphold the assessments made by the commissioners, as it sustained the objections of certain property holders on the ground that the sum assessed against them exceeded the benefits, and as to these objecting

property holders, the amount assessed was reduced to correspond with what the court concluded was the actual benefit shown to result. J. L. Lombard was the owner of a piece of property within the assessment district, which had, it seems, been omitted from the roll returned by the commissioners. The decree recited that this property (describing it) had been by consent found to be within the district, and would be benefited to a certain amount, and the sum of this benefit was by consent awarded against the property as described. The assessment, the decree of confirmation provided, was to be paid in instalments as specified.

The collection of the assessment proceeded according to the roll, and the execution of the proposed improvement was undertaken. Some of those who were assessed paid; others did not; and on proceedings being taken as authorized by the laws of Illinois to enforce payment, a controversy arose which, in its final stage, was considered by the Supreme Court of the State of Illinois, and the court decided that the assessment was void and could not be enforced. The reasoning by which the court so decided was this: That under the statutes of Illinois there was no authority to provide for a payment of a special assessment in instalments, and therefore, as the ordinance had fixed that method of payment, it was void. (*Culver* v. *The People*, 161 Ill. 89.) And the principle of this case was applied in subsequent cases. (*Farrell* v. *The Town of West Chicago*, 162 Ill. 280; *Connor* v. *Town of West Chicago*, 162 Ill. 287; *White* v. *Town of West Chicago*, 164 Ill. 196.) The improvement had in the meanwhile been constructed. The West Chicago Park Commissioners, after the decisions in question, dismissed the previous proceedings which had taken place in relation to the assessment. In July, 1895, an act was passed by the legislature of Illinois, which authorized park authorities, whenever a special assessment had been declared void by a court of competent jurisdiction, to "collect a new special assessment on property benefited by said improvement or completed portion thereof in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvements, or the completed portion thereof, shall each severally be liable to pay for said benefits to the same extent and the same proportion as in other cases." (Hurd's Statutes of Illinois, 1899, chap. 105, sec. 20, p. 1244.)

After the passage of this law the West Chicago Park Commissioners in July, 1896, adopted an ordinance providing an assessment to pay for the work of improving Douglas boulevard, which had been completed, as above stated. The first section of the ordinance, by way of preamble, recited the occurrences substantially as above stated. The second and third sections were as follows:

"SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed for, be levied to pay the cost of said boulevard improvement above specified,

and the remainder of such cost be paid by general taxation, viz., from the general funds of this board, all in accordance with an act of the general assembly of the State of Illinois, entitled 'An act to enable the park commissioners or park authorities to make local improvements, and provide for the payment thereof,' approved June 24 and in force July 1, 1895.

"SEC. 3. That the estimate of the cost of the said improvement be made by this commission and spread of record."

Subsequently the park commissioners made an estimate and report, and application was made to the county court of Cook County for the enforcement of an assessment roll prepared by the park commissioners in accordance with the estimate. This roll stated the total amount of the cost of the work, and charged the individual proprietors in the aggregate with a large portion of the total amount because of the special benefits conferred by the work upon them, the remainder—an insignificant part—of the cost was charged to the public, because of the general benefit to the public which, it was found, had been produced by the doing of the work. The sum charged against the individual property holders was distributed among them, and this distribution was shown by a statement containing the name of the owners, the lot owned by him, the total amount of the assessment, the sum to be deducted from this total in consequence of the instalments which had been paid on the former and void assessment, the net result of the benefit after making this deduction being stated in a separate column. To this roll was appended the certificate of the park commissioners, as required by law, that—

"Before entering upon their said duties they examined the locality where the said completed improvement has been made, and the lots, blocks, tracts and portions of land which are specially benefited thereby, and did estimate what proportion of the total cost of said completed improvement is of benefit to the public, and what proportion thereof is of benefit to the property benefited, and did apportion the same between the said park district and such property, so that each should bear its relative equitable portion; . . . that having found said amounts they did apportion and assess the amount so found of benefit to said property upon the several lots, blocks, tracts and parcels of land in the proportion in which they are benefited by said completed improvement, and that no lot, block, tract or parcel of land has been assessed the greater amount than it has been actually benefited thereby; that said assessment roll also shows the credit to which each lot, block, tract of land so specially assessed is entitled to, if any, for or on account of payments on previous assessments or instalments thereof, and the net amount of benefits assessed thereon."

The amount of the assessment against the individual lot owners for benefits in the new roll differed from the sum assessed in the previous one. Indeed, the new roll disregarded the reductions which had been decreed in the previous proceedings as to certain of the lot owners, since it increased the amount due by these owners over the sum fixed by the previous decree. The property of Lombard, which had been placed upon

the previous roll by consent at a particular amount, was placed upon the new roll for a larger sum than that shown in the previous roll. After publication of notice of the filing of the roll the present plaintiffs in error appeared in the county court of Cook County and objected to the confirmation of the roll. The objections which were urged were numbered from 1 to 18, and denied the validity of the new roll upon many grounds, all of which involved purely matters of local and non-Federal concern. They subsequently filed a motion to cancel the assessment on eight specified grounds, none of which involved the Constitution or laws of the United States. And this is also true of amended objections which were filed. Later, additional objections were filed, numbered from 1 to 5. The first charged, in general terms, that the assessment and the proceeding to confirm the same were in violation of the Fourteenth Amendment to the Constitution of the United States; the second, that as the proceeding was not authorized by any valid ordinance at the time the work was done, to confirm the assessment under the assumption that it was sustained by the act of 1895 would be a violation of the Fourteenth Amendment to the Constitution of the United States; the third charged that as the ordinance under which the previous assessment was made had been held to be void, there was no authority for doing the work at the time when it was done, and hence to enforce the subsequent ordinance would also violate the Fourteenth Amendment; the fourth but reiterated that as the work was completed before the Illinois act of 1895 had been passed, to construe that law as authorizing the assessment would also violate the Constitution of the United States; and the fifth repeated in different form the same proposition by asserting that the law of 1895, if held to be retroactively applicable to the work which had been completed at the time of its passage, would be repugnant to the Fourteenth Amendment to the Constitution.

On the hearing by objections to evidence, by motions to strike out, and by additional pleadings, the grounds above stated were repeated, but were all overruled. Following this, it is stated in the bill of exceptions—

"And thereupon all the said motions and legal objections having been disposed of, the said cause came on to be tried upon the objections triable by a jury; and thereupon it was stipulated in open court by the petitioners and by said objectors that the said cause should be submitted to the court for trial without a jury upon the said issues and upon the same evidence in all respects which has been offered upon the said motions and legal objections as hereinbefore set forth, without recalling witnesses or introducing or recalling or offering the said testimony, the same to be treated as having been offered upon the said issues, which was all the evidence offered on the said hearing. And thereupon the objectors contended that it was shown by the said evidence that the property of the said objectors and each of them, severally, was assessed more than its proportionate share of the cost of the said improvement; but said objections were overruled, and the court found the issues for the petitioners. . . . ."

The decree which was entered expressly found that in each particular case the property assessed was benefited to the sum of the assessment. An appeal was taken from this decree to the Supreme Court of the State of Illinois, and on such appeal errors were assigned numbered from 1 to 20. They repeated in various forms of statement all the objections of a Federal nature which had been previously urged and asserted, besides a number of grounds of purely local concern. The Supreme Court of Illinois decided that although it was settled by a course of decisions in that State that there must exist authority for making a special assessment at the time the levy was made and before the work was done, yet the original ordinance under which the first assessment which had been declared illegal was made afforded such an authority. Construing its former opinions, the court said that whilst it had declared the previous assessment to be void because it provided for a payment in instalments contrary to the State statutes, nevertheless the ordinance to the extent that it directed an assessment, remained, albeit it had been held that the provision as to payment by instalments could not be enforced. The court then reviewed all the various objections to the form of the assessment, and held them to be without merit. It moreover decided that as the previous assessment had been set aside because of the instalment feature, that the sums fixed therein were not conclusive, and on the new assessment it was competent to re-examine the question of benefits and to restate the amounts due, even although in doing it was ascertained that a larger sum was assessable upon some portions of the property than had been decreed by the order which confirmed the previous assessment. As to the property of Lombard, the court decided that the proof established that a change in condition had caused the property to be justly assessed for a larger proportion of benefit than had been attributed to it by consent in the first assessment. (181 Illinois, 136.) To this decision the present writ of error is prosecuted.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The assignments of error contained in the record are nine in number, and eleven in addition have been made since the record was filed in this court. The question whether the benefit accruing to each particular piece of property assessed equalled the sum of the assessment placed thereon was foreclosed by the findings of fact of the trial court, to which court the case was submitted without the intervention of a jury. It is suggested, although under the statutes of Illinois a special assessment can only be made for the amount of the benefit shown to exist, this is of no concern in this case since this levy is not a special assessment, but is a special tax. Where a special tax is imposed under the law of Illinois, it is asserted, no inquiry into the

benefits can be had, and, therefore, there arises the question whether the levy was invalid, as exceeding the benefits to be derived, since all investigation into the amount of the benefits was, as a matter of law, excluded. But this proposition is plainly an afterthought. From the statement of the case which precedes it is apparent that the objectors to the assessment considered that their defense raised the issue of benefit, that they tendered proof, submitted the question to the trial court without a jury and had an award against them. It is plain, also, that this contention was not raised by the assignment of errors in the Supreme Court of Illinois, and such question was not by that court in any way considered. Putting out of view questions of form, the principal contentions made in the Supreme Court of Illinois, as shown by the assignment of errors in that court, were as follows: That as under the law of the State of Illinois, an authority existing at the time the work was done was necessary to justify an assessment, a violation of the Fourteenth Amendment would be brought about by holding that authority for the assessment was supplied by the Illinois act of 1895, since such law was enacted after the work was completed, and that as the previous ordinance had been declared void by the Supreme Court of Illinois, to hold such void ordinance to be an authority for the subsequent assessment would also violate the Fourteenth Amendment, since it would amount to a want of due process of law and a denial of the equal protection of the laws. And these propositions, stated in varying form, really express every substantial issue raised by the twenty assignments which are here pressed. We do not take up each assignment in detail to show that this is the case, since a statement of them all, as summed up in argument of counsel, is in the margin,* and renders a more detailed enumeration unnecessary.

The power of the State of Illinois to levy a special assessment in proportion to benefits, for the execution of a local work, and the authority to confer on a municipality the attribute of providing for such an assessment, is not denied.

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* "1st. As the court will see, this is a hard case. The controversy arises out of an effort to compel a ribbon of land 125 feet wide, along the margin of a boulevard 250 feet in width, decorated and ornamented as a park, to pay the entire cost of its improvement, although it is made for the general benefit of the inhabitants.

"2d. The original ordinance for the improvement was declared by the Supreme Court, in a direct proceeding, to be *void*, and so utterly without effect as to form no basis for an adjudication thereon by the county court.

"3d. The constitution and laws of the State, as uniformly construed, permit no such charge to be created against private property without a previous valid ordinance providing that the cost be paid by special assessment or special tax.

"4th. The previous assessment having been extinguished completely by the decision of the Supreme Court, there remained no authority of law to charge this property. The legislature thereupon passed a law, after the work had been com-

It is no longer open to question that where a special assessment to pay for a particular work has been held to be illegal, no violation of the Constitution of the United States arises from a subsequent authority given to make a new special assessment to pay for the completed work. (*Spencer* v. *Merchant*, 125 U. S. 345.)

With these two propositions in mind it is certain that if the power flowing from the ordinance which the Supreme Court of the State of Illinois upheld existed, prior to the work, the assessment was valid. So, also, if the authority was only given subsequent to the work, it was, from the point of view of the Constitution of the United States, legally conferred. In either contingency, therefore, there was no cause of complaint so far as Federal rights were concerned. The contention advanced, therefore, amounts to this, that a violation of the Constitution of the United States has been produced by the exercise of a power which, whatever view may be taken, could be brought into play without giving rise to a conflict with such constitution. But in effect, it is asserted, this deduction is inapposite to this case, since the proposition here relied upon is that the Supreme Court of the State of Illinois maintained the assessment on a void ordinance, and, therefore, in effect decided that a valid assessment could be made where there was no authority whatever for the levy. This, however, rests upon an entirely false assumption, since it is manifest that the court below held that there was a valid ordinance, that is, one which sufficiently conferred the authority to make the assessment. Whether the ordinance was or was not valid, and the extent to which it was so, having regard to the State constitution and laws, was wholly a State and not a Federal question, and we are not concerned with it. Accepting the conclusion of the Supreme Court of the State of Illinois as to the existence of the ordinance by virtue of the State law and constitution, the proposition pressed

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pleted, providing that, notwithstanding the said provisions of the constitution of the State, the work previously completed *might* be charged upon the private property by a procedure therein for the first time provided.

"5th. On the application for such an assessment the property owners protested, setting up the provisions of the Constitution of the United States in denial of the right.

"6th. The courts of the State, although they had held the original ordinance *void*, so as to confer no jurisdiction on the courts even to consider it, held that it was *valid* for the purpose of creating a charge on property of plaintiffs in error.

"7th. If the ordinance was in fact valid, then the original judgment of confirmation, reducing this assessment, was valid and effectual, and should have been applied here.

"8th. By the whipsawing process we have referred to, the courts of the State have held that the ordinance of March 28, 1893, was *void*, so as to deprive plaintiffs in error of the benefits of its adjudication reducing the amount of their assessment; but *valid* for the purpose of creating a charge upon their property."

upon us comes to the result which we have above indicated, and, therefore, is obviously without merit. Indeed, the misconception involved in the argument was pointed out in *Castillo* v. *McConnico*, (168 U. S. 674.) There it was asserted that a particular assessment was void because of a mistake in the name of the person whose property had been assessed. The Supreme Court of Louisiana, interpreting the statutes of that State, otherwise decided. It was urged, however, that such decision was in conflict with many prior rulings of that court, and therefore a Federal question was presented. But it was held that as it was within the power of the State of Louisiana, without violating the Constitution of the United States, to direct the assessment without giving the name of the owner, by an adequate description of the property assessed, the decision of the Supreme Court of the State of Louisiana raised no Federal question. The court said (p. 683):

"The vice which underlies the entire argument of the plaintiff in error arises from a failure to distinguish between the essentials of due process of law under the Fourteenth Amendment and matters which may or may not be essential under the terms of the State tax or assessing law. The two are neither corelative or coterminus.

"The first, due process of law, must be found in the State statute, and cannot be departed from without violating the Constitution of the United States. The other depends on the lawmaking power of the State, and as it is solely the result of such authority may vary or change as the legislative will of the State sees fit to ordain. It follows that, to determine the existence of the one, due process of law is the final province of this court, whilst the ascertainment of the other, that is, what is merely essential under the State statute, is a State question, within the final jurisdiction of the courts of last resort of the several States."

And the principle thus inculcated not only disposes of the argument which we have previously considered, but also makes it clear that the Supreme Court of Illinois decided a local and not a Federal question when it held that it was competent on a new assessment to determine the questions of benefit from the proof, even though in so doing a different result was reached from that which had been arrived at when the former assessment which had been set aside was made. The theory lying at the foundation of all the arguments advanced to show that the court below committed error of a Federal nature is this, and nothing more, that the equal protection of the laws was denied by the Supreme Court of Illinois, because that court, although it treated the assessing ordinance as invalid for the purposes of the first assessment, upheld that ordinance as valid for the second assessment. This but asserts that because it is considered that there was inconsistency in the reasoning by which the Supreme Court of Illinois sustained its conclusion, therefore the equal protection of the laws was denied. If the proposition as thus understood was held to be sound, as it cannot be, every case decided in the courts of last resort of the several States would be subject to the revisory power of this court, wherever the losing party

deemed that the reasoning by which the State court had been led to decide adversely to his rights was inconsistent with the reasoning previously announced by the same court in former cases. In thus stating the ultimate deduction to which the proposition necessarily leads, we do not wish to be understood as implying that we think the reasoning upon which the Supreme Court of the State of Illinois placed its decision in this case is amenable to the inconsistency which it is insisted it embodies. As that consideration is wholly beyond the pale of our jurisdiction, we have not even approached its consideration.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.